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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 184.

C. H. GOODLETT, ADMINISTRATOR OF SIMON CALLAHAN, DECEASED, PLAINTIFF IN ERROR,

vs.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

FILED OCTOBER 22, 1883.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

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1 *Prosecution Bond.*

In the Circuit Court of the U. S. for the Middle District of Tennessee.

SIMON CALLAHAN *vs.* L. AND N. R. R. Co.

Know all men by these presents that we, L. and N. R. R. Co. and Ed. Baxter, sec'y, are held and firmly bound unto Simon Callahan in the penal sum of one hundred dollars, to the payment whereof we bind ourselves and each of us and each and every of our several heirs, executors, and administrators, jointly and severally, by these presents.

Witness our hands on this the 11th day of August, 1881.

The condition of this bond is such that the said L. and N. R. R. Co. removed a suit to the U. S. circuit court from the circuit court of Williamson Co., Tenn.

Now, if the said L. and N. R. R. Co. shall sustain removal of said suit with effect, or on failure thereof pay and satisfy all costs that may be adjudged against said company in said cause, or on failure of said Callahan, if convicted, to pay and satisfy said costs, if the said company shall pay the same, then this bond to be void;

2 otherwise to remain in full force and virtue.

LOUISVILLE AND NASHVILLE R. R. CO.,
By ED. BAXTER, *Att'y.*
ED. BAXTER, *Sec'y.*

Endorsed: Filed 11th day of August, 1881. Lewis T. Baxter, clerk.

Transcript.

STATE OF TENNESSEE, *ss:*

Pleas at the court-house in the town of Franklin, county of Williamson, and State aforesaid, on the first Monday, being the 4th day, of July, in the year of our Lord one thousand eight hundred and eighty-one, and in the 105th year of the Independence of the United States.

Present: The Hon. W. S. McLemore, judge of the 9th judicial circuit of the State of Tennessee.

Writ.

STATE OF TENNESSEE:

To the sheriff of Williamson county, Greeting:

You are hereby commanded to summon the Louisville and Nashville and Great Southern Railroad Company personally to be

3 and appear before the judge of our circuit court to be held for the county of Williamson, at the court-house in the town of Franklin, on the first Monday in July next, then and there to answer Simon Callahan in an action to his damage twenty thousand dollars.

Herein fail not, and have you then and there this writ.

Witness James R. Neeley, clerk of our said court at office in Franklin, the first Monday in March, A. D. 1881, and of the Independence of the United States the 105.

JAMES R. NEELY, *Clk.*

Endorsed: Issued June 28th, 1881. Executed on F. H. Sanderson, agent of the L. and N. & G. S. R. R. Co., June 28th, 1881. L. M. Lewis, D. sh'ff.

STATE OF TENNESSEE, *W'mson County:*

Personally appeared before me, James R. Neeley, clerk of the circuit court of Williamson county, Simon Callahan, who makes oath in due form of law that owing to his poverty he is not able to bear the expenses of the action which he is about to commence against the Louisville and Nashville and Great Southern Railroad Company, and that he is justly entitled to the redress sought to the best of his belief.

SIMON CALLAHAN.

Sworn to & subscribed before me June 28th, 1881.

JAMES R. NEELY, *Clerk.*

4 *Declaration.*

In Circuit Court. July Term, 1881.

SIMON CALLAHAN
vs.
THE LOUISVILLE AND NASHVILLE RAILROAD CO.

The plaintiff sues the defendant for twenty thousand dollars as damages, and for cause of action shows the court that at the time of the injuries complained of, and for a long time immediately before that, the defendant was a corporation created by an act of the Legislature of Tennessee, and was a common carrier of freight and passengers, and as such operated, used, and controlled a railroad track from Nashville to Decatur, Ala., and upon that track used and ran cars and engines. It was the duty of the def't to have its roadbed, track, cars, engines, and all its appliances in safe and suitable condition—as safe as care and skill could make them and up to the standard of the act—and to have in its employ men possessed of the proper degree of skill and care, and who must at all times use such care, skill, and diligence while in the def't's service. It was the duty of the def't to use the proper degree of care in the selection of its employees. It was the duty of the def't to have its time-pieces so regulated and in harmony as to be
5 in accord, and not to differ materially the one from the other, and thereby jeopardize the lives and limbs of its employees; but the defendant failed in all these respects. It was the plaintiff's duty and his orders while in the employ of this defendant to keep the time of the def't as indicated by its time-piece at Franklin, Tennessee, and to work and regulate his actions by that time-piece; but

the defendant did not keep its time-pieces in harmony, but, on the contrary, the time-piece at Nashville and that at Franklin, Tennessee, differed materially at the date of the injuries herein complained of.

On or about the 4th day of December, 1880, the pl't'ff was in the employ of the def't as foreman of a section of its road between Franklin and Nashville, beginning at Franklin and extending to Mallory, towards Nashville. There was a defect in def't's track about 5½ miles from Franklin and within the plaintiff's section. As it was his duty, the pl't'ff started from Franklin with his men in the hand-car to go to the *that* defective place to repair it, and left Franklin at an hour and minute, as indicated by def't's time there, to have reached said defect and the place of the accident, and did reach the place of the accident before any other of defend-
6 ant's trains or cars were due at said place of the defect or at the place of the accident, and was on proper time and in proper place on the track, as indicated by the def't's Franklin time, when, at a point about 2½ miles north of Franklin, the pl't'ff saw a passenger train of def't running towards him from Nashville. According to said Franklin time, said passenger train was not due at that place by some 15 or 20 minutes; so the pl't'ff was on def't's track at the proper time and place, where he had the right and where it was his duty to be at the time. According to the time of def't that the pl't'ff was ordered to be governed by, and while he was so in his proper place and in the discharge of his duty and without fault, the passenger train of def't, without any warning or notice to this pl't'ff from any source that it was near that place, or that it would be there, or that it had any right to be there, ran upon pl't'ff or upon the hand-car or against it, and thereby the pl'ff's leg was broken, and he was otherwise terribly bruised and mangled and made a hopeless cripple for life.

As soon as the plaintiff saw the said passenger train he made every effort in his power to get himself and men and car off the track and out of the way of said passenger train, but before he could do so he and his car were struck by said passenger train, and he received the injuries aforesaid. When he and his men and car ap-
7 peared upon the track before said passenger train it was the duty of the def't to have the engineer, fireman, or some other person upon the locomotive on the lookout ahead, and to sound the alarm whistle, put down the brakes, and use every possible means to stop the train and prevent an accident. But the def't failed in this respect to discharge its duty, and so the plaintiff says that without fault on his part, and by reason of the car-lessness and negligence of the defendant, its servants and agents, in the matters and on the points hereinbefore assigned, he was injured as aforesaid on or about the 4th day of December, 1880, in the county of Williamson, Tennessee, and by reason thereof has suffered great pain of mind and body, has lost many months from labor, and is not now able to do anything, and has paid out large sums of money, to wit, $—, in medical and nurse's bills in trying to be healed; yet to

Witness James R. Neeley, clerk of our said court at office in Franklin, the first Monday in March, A. D. 1881, and of the Independence of the United States the 105.

JAMES R. NEELY, *Clk.*

Endorsed: Issued June 28th, 1881. Executed on F. H. Sanderson, agent of the L. and N. & G. S. R. R. Co., June 28th, 1881. L. M. Lewis, D. sh'ff.

STATE OF TENNESSEE, *W'mson County:*

Personally appeared before me, James R. Neeley, clerk of the circuit court of Williamson county, Simon Callahan, who makes oath in due form of law that owing to his poverty he is not able to bear the expenses of the action which he is about to commence against the Louisville and Nashville and Great Southern Railroad Company, and that he is justly entitled to the redress sought to the best of his belief.

SIMON CALLAHAN.

Sworn to & subscribed before me June 28th, 1881.

JAMES R. NEELY, *Clerk.*

4 *Declaration.*

In Circuit Court. July Term, 1881.

SIMON CALLAHAN
vs.
THE LOUISVILLE AND NASHVILLE RAILROAD CO.

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5 in accord, and not to differ materially the one from the other, and thereby jeopardize the lives and limbs of its employees; but the defendant failed in all these respects. It was the plaintiff's duty and his orders while in the employ of this defendant to keep the time of the def't as indicated by its time-piece at Franklin, Tennessee, and to work and regulate his actions by that time-piece; but

the defendant did not keep its time-pieces in harmony, but, on the contrary, the time-piece at Nashville and that at Franklin, Tennessee, differed materially at the date of the injuries herein complained of.

On or about the 4th day of December, 1880, the pl't'ff was in the employ of the def't as foreman of a section of its road between Franklin and Nashville, beginning at Franklin and extending to Mallory, towards Nashville. There was a defect in def't's track about 5½ miles from Franklin and within the plaintiff's section. As it was his duty, the pl't'ff started from Franklin with his men in the hand-car to go to the *that* defective place to repair it, and left Franklin at an hour and minute, as indicated by def't's time there, to have reached said defect and the place of the accident, and did reach the place of the accident before any other of defend-
6 ant's trains or cars were due at said place of the defect or at the place of the accident, and was on proper time and in proper place on the track, as indicated by the def't's Franklin time, when, at a point about 2½ miles north of Franklin, the pl't'ff saw a passenger train of def't running towards him from Nashville. According to said Franklin time, said passenger train was not due at that place by some 15 or 20 minutes; so the pl't'ff was on def't's track at the proper time and place, where he had the right and where it was his duty to be at the time. According to the time of def't that the pl't'ff was ordered to be governed by, and while he was so in his proper place and in the discharge of his duty and without fault, the passenger train of def't, without any warning or notice to this pl't'ff from any source that it was near that place, or that it would be there, or that it had any right to be there, ran upon pl't'ff or upon the hand-car or against it, and thereby the pl'ff's leg was broken, and he was otherwise terribly bruised and mangled and made a hopeless cripple for life.

"As soon as the plaintiff saw the said passenger train he made every effort in his power to get himself and men and car off the track and out of the way of said passenger train, but before he could do so he and his car were struck by said passenger train, and he received the injuries aforesaid. When he and his men and car ap-
peared upon the track before said passenger train it was the
7 duty of the def't to have the engineer, fireman, or some other person upon the locomotive on the lookout ahead, and to sound the alarm whistle, put down the brakes, and use every possible means to stop the train and prevent an accident. But the def't failed in this respect to discharge its 'duty, and so the plaintiff says that without fault on his part, and by reason of the car-lessness and negligence of the defendant, its servants and agents, in the matters and on the points hereinbefore assigned, he was injured as aforesaid on or about the 4th day of December, 1880, in the county of Williamson, Tennessee, and by reason thereof has suffered great pain of mind and body, has lost many months from labor, and is not now able to do anything, and has paid out large sums of money, to wit, $—, in medical and nurse's bills in trying to be healed; yet to

pay the pl't'ff anything the def't fails and refuses, and hence this suit.

And for further cause of action the pl't'ff says that he sues the defendant, a corporation, as alleged in the first count hereof, and shows the court that by reason of the carelessness and negligence of the def't, its servants and agents, the hand-car in which he was necessarily riding on def't's track in the discharge of his duties on or about the 4th of December, 1880, was struck by the passenger train of defendant, and the pl't'ff's leg was broken, and he was otherwise mangled and crippled for life.

8 The plaintiff was ordered to govern himself by the defendant's time at Franklin, Tenn, and did so, and going by that time he was on the track of the def't at his proper place in the proper discharge of his duties, and while so acting another train of the defendant's, without any warning to the plaintiff of its approach, ran against the hand-car that the *def't* was in and inflicted said injuries upon him. Plaintiff had no notice nor means of knowing that said train was approaching him, but, on the contrary, was assured by the def't that no other of its cars or trains would be on that track, or had any right there at the time, and upon such assurance plaintiff was proceeding upon said track when the hand-car he was in was struck by the other train of the defendant before it was possible for him to get the car and himself off of the track and out of the way of the other train. When the plaintiff appeared upon the road of the def't the engineer, fireman, or some other person was not on the locomotive of the train on the lookout ahead, nor was the alarm whistle sounded, the brakes put down, and every possible means employed to stop that train and prevent an accident.

So the pl't'ff was hurt without his fault and solely by the fault and carelessness and negligence of the def't, its servants and agents, and he has in consequence suffered much pain and anguish of mind and body, lost much time from labor, and spent many hun-

9 dred dollars in necessary medical attention, and has been made a cripple for life. But the def't fails to pay for said damage, and hence this suit for twenty thousand dollars. Plaintiff demands a jury to try his case.

BOND AND HENDERSON,
BATE AND WILLIAMS,
Att'ys.

Endorsed: Filed July 5th, 1881. House, D. C.

Petition.

To the Hon'l Wm. S. McLemore, judge of the circuit court of Williamson county, Tennessee:

The petition of the Louisville and Nashville Railroad Company, citizens of the State of Kentucky, having their principal place of business therein, respectfully shows unto your honor as follows: 1st. That Simon Callahan, on the 28th day of June, 1881, brought suit against the Louisville and Nashville Railroad Company, in the cir-

cuit court of Williamson county, Tenn., to recover twenty thousand dollars for alleged damages. The summons was executed on your petitioners, returnable *to* the first Monday in July, 1881, and they will enter their appearance in said cause & court at the time of filing of this petition. The amount in dispute in said suit exceeds the sum or value of five hundred ($500.00) dollars, exclusive of costs. 2d. The plaintiff in said suit is a citizen of the State of Tennessee, his residence being in the county of Williamson, in said State.

Petitioners pray for the removal of said suit for trial into
10 the circuit court of the United States for the middle district of Tennessee, at Nashville, to be held on the 3 Monday in October, 1881, and they herewith offer their bond, executed by themselves, with John B. McEwen and Joseph B. Campbell as security, in the penal sum of one thousand dollars, conditioned that petitioners shall enter in said United States circuit court, on the first day of its session, copies of process against them of all pleadings, depositions, testimony, and other proceedings in the cause. Petitioners pray that said bond may be accepted as good and sufficient security, and that said State court proceed no further in said cause against said petitioners; and your petitioners will ever pray, &c.

THE LOUISVILLE AND NASHVILLE RAILROAD CO.,
By JNO. B. McEWEN AND
J. B. CAMPBELL,
Att'ys.

STATE OF TENNESSEE, *Williamson County:*

Personally appeared before me Jos. B. Campbell, the authorized attorney of the Louisville & Nashville Railroad Company, and being duly sworn, deposes and says that he has read the foregoing petition, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

J. B. CAMPBELL.

Sworn to and subscribed before me July 8th, 1881.
M. F. HOUSE, *D. C.*

Endorsed: Filed J uly 8th, 1881. House, D. C.

11 *Bond.*

We, the Louisville and Nashville Railroad Company, of the State of Kentucky, as principal, and John B. McEwen and Jos. B. Campbell, of Franklin, Williamson county, Tenn., as sureties, are held and firmly bound unto Simon Callahan, of the State of Tennessee, in the sum of one thousand dollars, to be paid to Simon Callahan or his assigns; for which payment we hereby bind ourselves, our successors, heirs, executors, and administrators, firmly by these presents.

This 8th day of July, 1881.

Whereas a suit was brought on the — day of June, 1881, in the

circuit court of Williamson county, Tennessee, by said Simon Callahan against the said Louisville and Nashville Railroad Company, who have filed their petition in said court for the removal of said suit into the next circuit court of the United States to be held in the middle district of Tennessee:

Now, therefore, the condition of the above obligation is such that if the said Louisville and Nashville Railroad Company shall enter in said circuit court of the United States, on the first day of its stated session next ensuing after the order of said circuit court of Williamson county, Tenn., for the removal of said suit into said circuit court of the United States, copies of all process against them, and of all pleadings, depositions, testimony, and other proceedings in said cause, and do other acts required by the acts of Congress in such cases
12 made and provided, then the above obligation to be void; otherwise to remain in full force and virtue.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
By McEWEN AND CAMPBELL, *Att'ys.*
JOHN B. McEWEN.
By J. B. CAMPBELL, AND
J. B. CAMPBELL,
Sureties.

Endorsed: Filed July 8th, 1881.

Entries on Minutes.

The following entry appears July 4th, 1881:

SIMON CALLAHAN *vs.* L. AND N. R. R. COMPANY.

In this cause comes the pl't'ff, by attorney, and moves the court for leave to amend the writ by striking out the words "and Great Southern," which motion is allowed, and said words are accordingly stricken out of said writ. And the plaintiff also asks that the officer be allowed to amend his return by striking out the letters "G. S." in said return, which is also allowed by the court.

SIMON CALLAHAN *vs.* L. AND N. R. R. Co.

FRIDAY, *July 8th*, 1881.

Court met pursuant to adjournment.
Present: The Hon'l S. W. McLemore, judge, &c.

This day came the defendants, by their attorneys, John B. McEwen and Joseph B. Campbell, and entered their appearance in this case.

13 SIMON CALLAHAN *vs.* L. AND N. R. R. COMPANY.

TUESDAY, *July 19th*, 1881.

Court met pursuant to adjournment.
Present: The Hon. W. S. McLemore, judge, &c.

In this case comes the defendant, by attorney, and moves the court

for leave to amend the petition and bond heretofore filed by inserting [in] the petition, after the words "and other proceedings in the cause," these words: "And for paying all costs that may be awarded by the said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto" and by inserting the same words in the bond, after the words "and other proceedings in said cause;" and J. B. Campbell, one of the securities, appearing for himself and for Jno. B. McEwen, the other security on the bond, being present in court and consenting for himself and for Jno. B. McEwen that the bond may be so amended, the court is pleased to grant said amendments which *are* accordingly done.

The following entry appears as of same date of above, viz: July 19th, 1881.

SIMON CALLAHAN *vs.* L. AND N. R. R. COMPANY.

This day came the parties, by their attorneys, and the plaintiff moves the court for judgment by default against the defendant, "because said def't has failed to plead to the declaration of plaintiff, the declaration having been filed on the 5th day of July, 1881, and said defendant being allowed only two days thereafter by law in which to plead," which motion is overruled by the court, and thereupon defendant moves the court for an order transfer-
14 ring said cause from this court to the circuit court of the United States to be holden at Nashville for the middle district of Tennessee on the third Monday in October, 1881, and said def't having on the 8th day of July, 1881, entered their appearance in this cause and filed their petition and bond for the removal of said cause from this court to said United States circuit court, the action of the court thereon being reserved by consent until the present time, and the same having been read to the court, and the court being of the opinion that said petition and bond are in conformity with the United States in such cases made and provided, it is therefore, upon motion of John B. McEwen and Jos. B. Campbell, attorneys for said def't, hereby ordered that the said security be accepted, and the said suit be removed in the next circuit court of the United States to be holden in the said middle district of the State of Tennessee, and that no further proceedings be had in said suit in this court; to all of which pl't'ff, by att'y, excepts.

Bill of Costs.

State tax	$5 00
Neely, clerk, writ sect'y, &c., 1.50; fil. dec., 25c.	1 75
Doc., 30c; fil. petition, 25; fil. bond, 25c.	80
Ent. order of app., 25c.	25
Motion and order to amend writ & return, 50c.	50
Motion & order to amend pet. and bond, 50c.; order removing cause, 25c.	75
Transcript cost & seal, 4.50	4 50
S. M. Lewis, D. S., ex. writ	1 00
	$14 55

15 STATE OF TENNESSEE, *Williamson County:*

I, James R. Neely, clerk of the circuit court for county and State aforesaid, do certify that the foregoing is a true and perfect copy of all process, pleadings, and other proceedings had in the case of Simon Callahan *vs.* Louisville and Nashville Railroad Co., together with the costs in said cause, as all appears of record and on file in my office.

Given under my hand and seal of office, in Franklin, this 10th day of August, 1881.

[SEAL.] JAMES R. NEELY, *Clerk,*
Per M. F. HOUSE, *D. C.*

Plea.

In the Circuit Court of the United States for the Middle District of Tennessee.

SIMON CALLAHAN *vs.* L. AND N. R. R. COMPANY.

The Louisville and Nashville Railroad Company, by its attorneys, for plea says that it is not guilty of the premises in the declaration laid to its charge, or any part thereof, in manner and form as the plaintiff hath therein complained, and of this the said Louisville and Nashville Railroad Company puts itself upon the count-y.

ED. BAXTER,
JOHN B. McEWEN, AND
JOSEPH B. CAMPBELL,
Attorneys for Defendants.

And the plaintiff doth the like.

BOND AND HENDERSON,
BATE AND WILLIAMS,
Att'ys for Pl'ft.

The plaintiff joins issue with the understanding that the
16 pl'ft relies upon his plea to the jurisdiction of this court.

BOND AND HENDERSON,
BATE AND WILLIAMS,
Att'ys.

Endorsed: Filed Oct. 19th, 1881. Lewis T. Baxter, clerk.

Answer to Petition for Removal, &c.

SIMON CALLAHAN *vs.* L. AND N. R. R. Co.

To the honorable circuit court of the United States for the middle district of Tenn.:

The answer of Simon Callahan, plaintiff in the cause of Simon Callahan *vs.* The Louisville and Nashville Railroad Company, to the petition of said Louisville and Nashville R. R. Co. for the removal of said cause from the circuit court of Williamson county, Tennessee, to the circuit court of the United States for the middle district of Tennessee, filed therein July 8th, 1881.

In answer to said petition said Simon Callahan would respectfully

beg leave to state the following: He admits the bringing by him of the suit against petitioners in the circuit court of Williamson county, Tennessee, at the time, for the amount, and returnable to first Monday in July, 1881, as stated in said petition.

He admits also that he is now, and was at the time of bringing said suit, a citizen of the State of Tennessee, *being* his residence in the county of Williamson. He denies that said Louisville and Nashville R. R. Co. are *a* citizen- of the State of Kentucky, but would respectfully beg leave to show that at the time of the

17 commencement of his said suit they were, and have been ever since and are now, a citizen of the State of Tennessee, in this, to wit: That then and now the petitioners have been and are now a body politic and corporate, organized and existing in the State of Tennessee under and by virtue of an act of the General Assembly of said State entitled "An act to incorporate the Louisville & Nashville Railroad Company," passed December 4th, 1851, and an act of said General Assembly entitled "An act establish*ed* a system of internal improvements in this State," passed February 11th, 1852, and an act passed during the session of 1855–'6, being chapter 51 of the acts of said years, and an act passed during the session of 1855–'6, being chapter 227 of the acts of said years and chapter 219 in the published acts of the same year; also acts passed during the session of 1857–'8, being chapter 18 and chapter 163 in the published acts of said session.

And that under and by virtue of said acts the said Louisville and Nashville railroad, so far as the same was by said acts contemplated to be situated in the State of Tennessee, was before the commencement of the suit in above-styled cause built and completed, and has been ever since that time and now is used and operated in this State by the petitioners, and said Callahan respectfully submits that *in* effect of said acts above mentioned was to constitute the said Louisville and Nashville R. R. Co. a corporation of the State of Tennessee, and consequently a citizen thereof.

18 Said Callahan would further show that on the — day of ——, 187–, the Louisville & Nashville R. R. Company leased the Nashville and Decatur R. R. for the term of —— years, the latter being a corporation created and organized by the Legislature of the State of Tennessee under and by virtue of an act of the General Assembly of said State passed during the session of 1865–'6, being chapter 70 of the published acts of said session, and an act passed during the session of 1866–'7, being chapter 55 of the published acts of said session, said Nashville and Decatur R. R. having been formed by the *consideration* of the Tennessee and Alabama, the Central Southern, and the Tennessee and Alabama Central railroads, and — to the several acts of the General Assembly of the State of Tennessee creating —, and in regard to the said last three mentioned corporations the honorable court is respectfully referred for the provisions thereof.

Said Callahan would further state that in accordance with the terms of said lease the said Louisville and Nashville R. R. Company took charge and has been in the possession of and running the said

Nashville and Decatur railroad since the time of said lease, and had the charge and possession of and were running the same at the time he brought his suit hereinbefore mentioned, — have been ever since and are now, and that the injuries of which he complains as having been inflicted by the Louisville and Nashville R. R. Co. were received by him on the line of the Nashville and Decatur railroad, and he respectfully submits that under this — of facts petitioners are answerable to the laws of the State of Tennessee through her own courts. He therefore prays that said cause hereinbefore referred to be remanded back to the circuit court of Williamson county, Tennessee.

BATE AND WILLIAMS AND
BOND AND HENDERSON,
Ag'ts for Simon Callahan.

STATE OF TENNESSEE, —— *County:*

Personally appeared before me Simon Callahan, who makes oath in due form of law that he has heard read the foregoing answer, and that the facts stated therein are true to the best of his knowledge, information, and belief.

SIMON CALLAHAN.

Sworn to and subscribed before me Oct. 17th, 1881.
W. O. N. PERKINS,
U. S. Com'r.

The Louisville and Nashville R. R. Co., without waiving objections, &c., for replication to the foregoing answer or plea. says that it will aver and prove that its petition is sufficient and true, and that said answer or plea is untrue and unsufficient; wherefore, &c.

ED. BAXTER,
Att'y for L. and N. R. R.

Endorsed: Filed Nov. 1st, 1881. Lewis T. Baxter, clerk.

Motion to Remand to State Court.

SIMON CALLAHAN *vs.* L. AND N. R. R. COMPANY.

In this cause the plaintiff moves the court to remand the same to the circuit court of the county of Williamson, from which it was removed, because from the petition itself this court has no jurisdiction, and because of the facts set forth and contained in the answer of plaintiff to the petition filed in the cause, which answer and facts the plaintiff prays the court to consider in this motion.

BOND AND HENDERSON,
BATE & WILLIAMS,
Att'ys for Pl'ff.

Endorsed: Filed Nov. 1st, 1881. Lewis T. Baxter, clerk.

Answer to Petition.

SIMON CALLAHAN *vs.* L. AND N. R. R. COMPANY.

To the honorable circuit court of the United States for the middle district of Tennessee:

For further answer in the case of Simon Callahan *vs.* The Louisville and Nashville Railroad Company to the petition of said Louisville and Nashville R. R. Company for the removal of said cause from the circuit court of Williamson county, Tennessee, to the circuit court of the United States for the middle district of Tennessee, filed therein on July 8th, 1881, said Simon Callahan would respectfully beg leave to state the following:

He denies that said Louisville and Nashville R. R. Company is a citizen of the State of Kentucky, but would respectfully beg leave to show, in addition to the facts set forth in his answer filed in this cause on Nov. 1st, 1881, that at the time of the commencement of this suit they were and have been ever since and are now a citizen of the State of Tennessee in this, to wit:

21 That then and now the said Louisville and Nashville Railroad Company have been and are now a body politic and corporation organized and existing in the State of Tennessee under and by virtue of an act of the General Assembly of said State, entitled "An act to charter the Station Camp Creek Turnpike Company in the county of Sumner and for other purposes," passed February 1st, 1850, which said act is fully set out in chapter 118, section 17 to section 21, both inclusive, on pages 313 and 314, of the published acts of said General Assembly for the years 1849–'50, to which the honorable court is respectfully referred.

And that under and by virtue of said act and of the other acts of said General Assembly mentioned and referred to in his answer heretofore filed in this cause the said Louisville and Nashville railroad, so far as the same was by said acts contemplated to be situated in the State of Tennessee, was, before the commencement of the suit in above-styled cause, built and completed, and has been ever since that time and now is used and operated in this State by said company.

And said Callahan respectfully submits that the effect of said acts was to constitute the said Louisville and Nashville R. R. Company a corporation of the State of Tennessee and consequently a citizen thereof.

And he respectfully prays that this his further answer to the petition of said L. and N. R. R. Co. be heard and considered

22 along with his answer heretofore filed in this cause, and that this cause be remanded back to the circuit court of Williamson county, Tennessee.

BATE AND WILLIAMS AND
BOND & HENDERSON,
Att'y- for Callahan.

STATE OF TENNESSEE, *Williamson County:*

Personally appeared before me, W. O. N. Perkins, United States commissioner, Simon Callahan, who makes oath in due form of law that the facts stated in the foregoing answer on bill [are true] to the best of his knowledge, information, and belief.

SIMON CALLAHAN.

Sworn to and subscribed before me Dec. 8th, 1882.

W. O. N. PERKINS,
U. S. Comm'r.

The Louisville and Nashville Railroad Company, without waiving objections, &c., for replication to the foregoing answer or plea, says that it will aver and prove that its petition is sufficient and true, and that said answer or plea is untrue and insufficient; wherefore, &c.

ED. BAXTER.

Endorsed: Filed Dec. 12th, 1881. Lewis T. Baxter, cl'k.

S'p'a Issued Ap'l 17, 1882.

The President of the United States to the marshal of the middle district of Tennessee, Greeting:

You are hereby commanded to summon James McEwen and Rob't Rainey, if found in your district, personally to be and appear before the judges of the circuit court of the United States in the sixth circuit for the district aforesaid, at the Federal court-room at
23 Nashville, on the 17th day of April, 1882, then and there to testify and the truth to speak on behalf of the defendant in a certain matter of controversy in said court pending, wherein Simon Callahan *are* plaintiffs and L. & N. R. R. defendants.

And this you will in nowise omit under the penalty of the law.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said court, on this the 17th day of April, A. D. 1882, and of the Independence of the United States the 106 year.

LEWIS T. BAXTER, *Cl'k,*
P'r CHAS. NASH, *Dep. Cl'k.*

Endorsed: Executed Ap'l 17, 1882, by F. G. Tignor.

Entries on the Minutes.

DECEMBER 13TH, 1881.

At a circuit court of the United States, held in the city of Nashville on the 13th day of December, in the year of our Lord eighteen hundred and eighty-one—present, the Hon'l- D. M. Key, U. S. judge—the following proceedings were had, to wit:

SIMON CALLAHAN
vs. } 2581.
L. AND N. R. R. COMPANY.

In this cause, upon agreement of counsel on both sides it is ordered and adjudged by the court that the motion of the said
24 Callahan, filed Nov. 1st, 1881, to remand this cause to the circuit court of Williamson county, be disallowed and overruled, to which action of the court said Callahan excepts. The said Callahan, by his attorneys, then moved the court for leave to file the papers remarked as filed by the clerk Dec. 12th, 188[illegible], which motion the court was pleased to overrule. The court, however, orders that while said paper shall not be treated as further plea or answer, it and the other paper filed Nov. 1st, 1881, *by* may be treated as notice to said Louisville and Nashville R. R. Company that the facts stated in them will be relied upon, on the trial of this case, by said Callahan as showing that this court has no jurisdiction, and that the case should be remanded. The said Callahan moved the court to strike out the word answer in the papers filed by him on Nov. 1st, 1881, and Dec. 12th, 1881, referred to above, and to insert in them the word plea instead, which motion the court allowed, and to its action the Louisville and Nashville R. R. Company excepts.

SIMON CALLAHAN *vs.* L. AND N. R. R. COMPANY.

APRIL 25TH, 1882.

Came the parties, by their attorneys, and came also a jury of good and lawful men, to wit, J. C. Chilton, G. L. Walton, Jno. W. Fogge, J. O. Griffith, Thomas Boyers, Wm. M. Simpson, Mathias Wright,
B. R. Cutter, John Duncan, Oliver Boyd, J. W. Turner, and
25 T. J. Wilson, who, being elected, tried, and sworn well and truly to try the issues joined, after hearing part of the evidence were respited until to-morrow morning.

SIMON CALLAHAN *vs.* L. AND N. R. R. COMPANY.

APRIL 26TH, 1882.

Come the parties and come again the jury heretofore empanneled in this case, who, after hearing further evidence in this case, were respited until to-morrow morning.

SIMON CALLAHAN *vs.* L. AND N. R. R. COMPANY.

APRIL 27TH, 1882.

Came again the parties, by their attorneys, and came again the jury empanneled in this case, who, after hearing a portion of the argument of counsel, were again respited until to-morrow morning at nine o'clock.

SIMON CALLAHAN *vs.* L. AND N. R. R. COMPANY.

APRIL 28TH, 1882.

Came again the parties, by their attorneys, and came again the jury heretofore empanneled in this cause, who, after hearing further argument of counsel and the charge of the court, upon their oaths do say that they find the issues in favor of the defendant.

26 It is therefore considered by the court that the defendant have and recover of the plaintiff and his security the costs hereof, for which let *fi. fa.* issue.

SIMON CALLAHAN *vs.* L. AND N. R. R. COMPANY.

MAY 16TH, 1882.

Came the parties, by their attorneys, and the plaintiff's attorneys moved the court in arrest of judgement for writ of jurisdiction, which motion was by the court overruled; to which action of the court the plaintiff, by att'y, then and there excepted. And thereupon came the parties, by their attorneys, and the plaintiff's att'ys moved the court for a new trial, which motion was by the court overruled; to which action of the court the plaintiff, by att'y, then and there excepted. And thereupon the plaintiff, by his att'ys, presented to the court his bill of exceptions to the rulings of the court at the trial, which was signed and sealed by the court and ordered to be made a part of the record of this cause.

27 *Bill of Exceptions.*

In the Circuit Court of the United States for the Middle District of Tennessee.

SIMON CALLAHAN
vs.
THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

On the trial of this cause the following testimony was submitted to the jury:

Witnesses for the Plaintiff.

SIMON CALLAHAN, the plaintiff, testified as follows:

I have worked for this defendant seven years; I received my injuries on the 4th day of December, 1880, about 2 or 2½ miles north of Franklin, Tenn.; Frank Cook (col'd) told me that morning, Saturday, that some rails were out of fix at the north end of my section; I asked him if they would last till Monday; he said he thought not; I started him up there between 6 & 7 o'clock that morning, and told him to go to those defective rails and fix them if he could before the train No. 3, passenger, reached there, and if he could not fix them so the train could pass safely to take a

28 red flag and flag the train down, so that no damage would be done, and that my other hands and I would come up to him as soon as we fixed the track there in Franklin; so he left for the

north end of the section, and I saw no more of him till after I was hurt. We others went at once to fixing track at Franklin; the frog was out of fix and a rail defective and track sunk, and trains could not pass there with safety till these were fixed. While the hands were fixing track at Franklin I went to the office of Mr. Sanderson, the telegraph operator of the defendant there, and asked him where passenger train No. 3 was; he made no reply; I left and went back to my hands, and in a little while I went back to the window of Sanderson's office and asked him again where No. 3 train was; he said he did not know—said he did not keep up with the trains those days; I said to him that he ought to know—that it was his business and duty to know; I went back to my hands, and when we had finished repairing the track there I went to the office and asked Butterfield where that train No. 3 was; he went to the battery and worked at it a little, and then said to me that he could not find Nashville, or
29 could not get communication with it. He then looked at the railroad clock and said it was not time for that train, No. 3, to leave Nashville. I looked at my watch and it was 8.45 by it and 8.40 by the railroad clock. The time for train No. 3 to leave Nashville was 9.08 a. m. As soon as we got the track fixed at Franklin so that trains could pass safely we started to go to the defective place at the north end of the section where Frank Cook had been sent to. When we left Franklin we had about one hour and seven minutes to make Mallory, three miles from Franklin, as I remember. At Sulphur Springs, John B. McEwen's crossing, I listened, but heard no train. I was not listening for No. 3, because, according to the time-clock at Franklin that we all had to be governed by, it was not time for No. 3 to be along where I was, but I knew extras were frequently sent out whenever it suited the company without notice to us, and I was listening for any extra train that might be out. I was standing on the hand or push car, and we were going along the track and saw the smoke of No. 3 about a quarter of a mile ahead of us coming fast. I told the hands it was com-
30 ing. I got down and we tried our best to get the car off the track. We lifted one end off and then the other, and turned it upon one side and held it there, but could not get it over against the embankment for want of time, and because in the hurry our tools and the iron rails we had on had fallen between the car and the bank, and we did not have time to get them out of the way. We did all we could to get the car off the track, and to save the train and passengers from being wrecked. We held the car up on its side till part of the train, engine, tender, and baggage-car, had passed and we could hold it no longer. The hands let go when we could hold no longer, and the train, or part of it, struck the hand-car and knocked it over on me, somehow, and broke my leg and hurt my hip. I was taken home in Franklin by the passenger train, and as soon as I reached there I sent my son with my watch to the agent, Sanderson, to see if it was not with the clock. This was within some 15 or 20 minutes after I got hurt. I set my watch by that clock the day before I was hurt; I set it five minutes ahead of the clock. The day I was hurt, when I was about to start up

31 towards Mallory's, I looked at the watch and clock, and the watch was 8.45 a. m. and the clock was 8.40. I went with Blackburn and others last Wednesday to the scene of [the] accident, and Baugh and I pointed out to them the exact spot of collision, and they measured from that spot; I heard no bell or whistle as the train approached us; that train could have been stopped then in the length of four cars, tender, and engine; I have frequently seen such a train going at that speed stopped in that distance; that train was due at Franklin at 9.47 a. m.; when the train got in sight of me it was 9.25 a. m.; I had just looked at my watch, and had hardly got it back in my pocket when I saw No. 3 coming; Mallory's is about one mile from place of collision & about three miles from Franklin; about 75 yards north of place of accident the ground is such that we could have got the hand-car entirely out of the way; I was confined to my bed 4 months, and then went on crutches 6 months, and am not able yet to work any now; can't stand or walk on my leg more than half an hour at a time, & am lame.

32 The men who measured last Wednesday had a man to stand at the place of the accident, and measured from that; that hand or push car was furnished me by the def'ts to use in the business to carry rails on, &c.; I was foreman of the section gang, and got $40 per month; that was the only place between Franklin and northern end of my section where there is any cut of consequence, and with four hands we could lift that car off the track at any other place by taking it off one end at a time; the collision was at the north end of the cut.

X-examined:

We had got some iron rails at the south end of that cut, and put them on the hand-car, and were taking them along to repair the track; my section was 8¼ miles long, 2¾ south of Franklin, and 5½ north of it. When the train struck me it was not due there, but was due about between Overton's and Brentwood, according to my time, which I had taken from the railroad clock at Franklin, that we all had to go by. I was struck at 9.25, and the train was not due at Franklin till 9.47, and it was only about two miles from where I was struck to Franklin. I was expecting freight train No. 14 and

33 this train—No. 3—to meet at Franklin that morning, because No. 14 was behind time. A freight conductor told me that morning that No. 3 and 14 would meet at Franklin that day; that hand-car was about 8 feet long, 6 feet wide, and two feet high; No. 3 stopped in about its length after passing me. I was engaged trying to get the car out of the way and prevent a wreck of the passenger train, and don't know whether [the] engineer was trying to stop as he passed me or not. I had no flagman ahead of me at the time, because I was not expecting any train; no train was due there by my time. It is not customary nor usual to have a flagman ahead of the hand-car unless a train is due and expected according to schedule time, and none was due or expected there at that time. Sanderson did not tell me that morning at Franklin not to set my watch by that clock because it was not running regularly; I did not

know the clock did not keep correct time; I set my watch 5 minutes ahead of the clock to be on the safe side; Sanderson did not pull out his watch that morning and tell me the correct time. It took about 30 minutes to push my car, if empty, from Franklin to Mallory's; if not delayed I could have got my car out of the cut in three minutes more, and before any train was due there by my time and that clock; my watch is a good timepiece. I don't know how long No. 3 had been running south on that same time; it may have run on it for two years. I stopped at the south end of that cut to listen for a train and to get the rails. After I had removed the car from the track I did not have force enough to keep it out of the way of the train; I had not asked for any further force before going out that morning. In case of my having any doubt as to whether a train was coming it was my duty to have a flagman out ahead of my car; I did not think No. 3 was coming then; no part of the passing train struck me; Stevenson, the conductor, died several months ago.

Doctor GENTRY testified as follows:

I am a practicing physician and surgeon; I waited on Callahan in his injuries received in the railroad accident; began to treat him the day he was hurt, Dec. 4th, 1880; visited him occasionally for two months and afterwards—occasionally for some months. He was flat on his back two months. I kept his leg in splints three months. He could not use crutches for three or four months. His leg was broken in two places. He suffered greatly; [there] was erysipelas. I reached him in a little while after he was hurt, in 15 or 20 minutes after. He is still crippled up, and can do but little work, if any. While I was at Callahan's he sent his watch by his son, Simon to Mr. Sanderson to know how it compared with the railroad clock at Franklin. His son returned and reported that Sanderson said the watch was behind time; do not know how much behind he reported. The old man Callahan was berating Sanderson for not keeping correct time. Callahan was perfectly sober. I smelt no liquor on him, and, as he needed a stimulant, I gave him liquor. $200 to $250 would be a reasonable charge for my services.

FRANK COOK (col'd) testified:

I have worked for this defendant 10 to 15 years as section hand; worked under pl't'ff 3 or 4 years; was track-walker for him, and as such went over the road sometimes daily, sometimes every other day, and sometimes once in 2 or three days. On the day defendant was hurt he sent me up the track above Mallory's, at north end of the section, to fix the track so the train could pass over it. A rail was defective up there. Pl't'ff told me to fix it so the train could pass safely, if I could, and if I could not to flag the train. I fixed it and the train passed over it safely. Callahan and the hands with him were fixing the track and frog at Franklin, and told me that as soon as he got the track and frog fixed he would follow on up to where he had sent me. I did not see Callahan any

more that day after I started off towards Mallory. After fixing that place train No. 3 passed me on its way to Franklin, and I went on down after it and found Callahan's car broken all to pieces.

X-examined:

I saw the defect in the track up there above Mallory's on Friday and told Callahan of it Saturday morning, and he started me up there about six o'clock Saturday morning to fix it. Three rails needed fixing up there. I fixed them Friday evening a little, so that they would last till next day. I told pl't'ff I was afraid that
place at north end of section was not safe, and he hurried me
37 on up there and said he would follow as soon as he fixed the
place at Franklin.

JESSE BAUGH testified as follows:

I was one of the section hands under Callahan when he got hurt. I had worked for this def't as a section hand on its road about 8 years and under pl't'ff three years. The morning of the accident we took out a rail and raised the frog and fixed some other things at Franklin, and as soon as we got the track safe for trains Mr. Callahan went up to the office of the railroad company there. He went up to the office twice before this that morning. He told us to get our things ready and put our push-car on the main track, so as to go up above Mallory's to repair the track at Brook's at north end of section. We put some rails on that car to fix the track with. The rails are 30 feet long. The push-car, or hand-car, is about 8 feet long, 6 or 7 feet wide, and about two feet high. That is the kind of a car used by section hands in their business. We stopped at McEwen's and listened, but heard no trains. We were going along the track with the hand-car. Mr. Callahan was on top of
the car, and we hands were pushing it along. When we
38 were in the cut pl't'ff said, "Here she comes," meaning train
No. 3. I looked up and saw it after we began to try to get the car off, and then it was about 75 yards off, as I supposed. We at once tried to get the car off the track. We lifted one end off and then lifted it up on end. That was all we could do. We did all we could to get the car out of the way, but could not. If we had held on to the car we would all have been killed. No one could stand there without danger to his life from the passing train. We could not get the car out of the way, and had to let it go to save our lives. If we had staid where we were holding our car we would have been killed. We got the car just as far out of the way of the passenger train as we possibly could in the time we had. The telegraph poles are about 70 yards apart. The iron rails of the track are 30 feet long. Last Wednesday Mr. Callahan and I went with Mr. Henderson, his lawyer, and with Mr. Blackburn and Mr. Riley and pointed out to them the exact place where the accident occurred. A man stood at the place of the accident and put a hat on a stick and held it up so that the hat was two feet above his head. That was done so that the hat would be as high from the ground as Callahan's head was when standing on our car. I stood

on the track at the distance of seven telegraph poles towards
39 Nashville, and saw the hat the man had two feet above his head at the place of the accident. The cut there at the place of the accident is 7 or 8 feet deep; the collision was near the north end of the cut; the ground on each side of the cut is higher south of the place of accident and slopes from that place towards the north. I have seen passenger trains of the length of that one running at the usual speed stopped in the length of the train of 4 or 5 cars, engine and tender. Callahan and all of us hands were perfectly sober; not a drop of liquor was in the crowd. After the accident a passenger offered Callahan some wine, but he declined it. We could get the car off the track by lifting one end at a time at any place outside of a cut.

X-examined:

I did not hear any whistle of the engine till just as [the] train checked up. Six men could handle the push-car very well. We had whatever men the railroad company would give us. Dick Thomas (col'd) was sick that day and not with us. The train stopped in about its length from us. While the car was up on end we were trying to push it over towards the bank. If we had held on to the push-car I think we would all have been killed. I think the
40 steps of the passenger cars are further outside the rail than the sides of the car; they go nearer the ground than the cars do. I made a written statement of the circumstances of the accident at the time, and the railroad authorities took that statement. They required us hands to make a statement in writing, and we did it. The engine, tender, and baggage car passed us without touching any of us, or the push car we were holding up, before we let the push car go. Before we let the push car go the three hands at the other end of the car ran off. The steam was shut off as the engine passed us.

JOSEPH W. BLACKBURN testified:

I run hacks and transfer wagons at Franklin, and did when plaintiff was hurt; I run them in connection with the railroad trains. My business made it necessary for me to keep the time of the railroad clock there. That clock was out of time the day of this accident. I asked Sanderson, defendant's telegraph operator at Franklin, about the clock, and he told me it was out of repair. Once before that day it had been sent to Nashville for repairs. I had seen Ed. Yound, def'ts baggage agent at Franklin, tinkering with that clock, trying to regulate it. In a day
41 or two after the accident that clock was laid on the platform to be sent to Nashville for repairs. On the day of the accident Sanderson told me not to go by that clock, because it was out of time. He said to me once that that clock would sometimes lose from one to ten minutes per day. This map, Exhibit A, is a fair representation of the track and objects at and around the place of accident. On last Wednesday I went there with pl't'ff and Jesse Baugh, and Mr. Henderson, pl't'ff's lawyer,

and Mr. Riley, and made measurements and observations. One of the party stood at the place of the accident on the track with a hat on a stick and the hat two feet above his head. I went up the track from the place of accident towards Nashville, and I stood on the track 375 yards from that hat on the stick (two feet above the man's head) and could and did see it. I then stood on the track at a point 180 yards towards Nashville from the place of the accident, and from that point I could and did see the iron rail of the track at the place of the accident. I stood in the middle of the track. The engineer could have seen Callahan on the hand or push car 375 yards before he struck him. That was my opinion. I did not have an engine to test it with. Callahan and Baugh pointed out to me the
42 place of the accident, and I made the measurements from that place. I saw Callahan that morning before he was hurt, and he was perfectly sober.

JOHN RILEY testified:

A day or two after Callahan was hurt I saw the railroad clerk on the platform at Franklin and asked Ed. Young, baggage agent, where it was going. He said, "To Nashville for repairs."

Riley made measurements in connection with Blackburn, and corroborates his statements as to the result of his measurements and observations made at the place of accident.

M. H. RAGSDALE testified:

I was in the railroad agent's office at Franklin the morning pl't'ff was hurt. Plaintiff came into the office and asked the railroad agent where train No. 3 was. The agent replied that he did not know. Callahan said to the agent: "You ought to know; it is your business and duty to know." Callahan came to the agent's window and asked him that, and walked away. I don't remember which agent it was that said that. I did not see Callahan at the agent's office but once that morning.

43 SIMON CALLAHAN, Jr., testified:

I am a son of the pl't'ff. When he reached home in a few minutes after he was hurt he sent me with his watch to ask Mr. Sanderson if it was right—keeping the right time. I took it to Mr. Sanderson and told him what father said, & Mr. Sanderson looked at father's watch and told me that the watch was (25) twenty-five minutes behind his watch, but he did not say how my father's watch compared with the railroad clock.

Pl't'ff read the various acts set forth in his answers to the petition for removal of the cause from the State to the Federal court.

Defendant's Witnesses.

F. H. SANDERSON testified:

I am telegraph operator and agent of defendant at Franklin, Tenn., and was when pl't'ff was hurt. Pl't'ff came to my office at 9.05 a. m. the morning of the accident and asked where train No. 3 was. That

was the passenger train from Nashville going south. I told him it was reported on time at Nashville at the L. and N. depot.
44 Butterfield told him to wait and he would see if it had left South Nashville, but the wires were busy at the time and he could not communicate with South Nashville, and Callahan left before the information could be had. I told pl't'ff not to set his time by the clock, as it had not run right for a week or two. Some three or four minutes after pl't'ff left the office he started with his car up the road towards Mallory. I know nothing of his having been there at the office enquiring for train No. 3 except that one time. My clock was four minutes behind time that morning. Butterfield told Callahan that the line was busy at the time, but to wait a minute and he would find out whether No. 3 had left South Nashville depot. Callahan remained there some 2 or 3 minutes & left. In a few minutes Butterfield received information that No. 3 had left South Nashville and went to the window, but Callahan was gone. The clocks in agent's offices along the whole line of the road were set at 10 o'clock a. m. each day by telegraph, the standard being at Nashville and Louisville.

X-examined:

I don't say that pl't'f did not come to the office but once to enquire for No. 3, but I saw him but once. Fifteen or twenty
45 minutes after the accident pl't'f's son brought the watch of pl't'ff to the office, and was comparing it with the clock. I did not tell the son that pl't'f's watch was 25 minutes behind my watch. Butterfield did not tell Callahan where No. 3 was. The clock was four minutes behind time that morning. I had not reported the fact of its irregularity to the railroad authorities at Nashville. In the two weeks I had been there before the accident I had had to regulate that clock frequently. It was the time-piece for all railroad hands in and about Franklin to be governed by, and we were governed by it. The railroad company furnished that clock for that purpose. Young had taken the clock down while I was there. I sent the clock to Nashville for repairs the day after the accident. I did not tell Blackburn that the clock sometimes varied from one to ten minutes per day. That train was due at Franklin at 7.47 a. m. that day. It was 5 or 10 minutes late that day; caused by the accident, I suppose. That clock is still there in the office at Franklin for the government of the employees. I did not tell Callahan what to set his watch by. There was nothing else there for employees to go by except that clock. I did not tell him the
46 right time by my watch and to set his watch by mine.

E. S. BUTTERFIELD testified:

I was night telegraph operator at Franklin when pl't'f was hurt. I now belong to the U. S. army, stationed in Ohio, and came here to testify in this case. My office and Sanderson's were in the same room.

When pl't'ff first came in Sanderson was not in. He asked where No. 3 was. I told him I did not know. He came again and

asked for No. 3, and I told him it was reported due on time in Nashville. I went to Franklin Nov. 25, 1880, I think. I heard Sanderson tell pl't'ff not to set his watch by that clock, because it had not been keeping good time for a week or two.

X-examined:

I was only at Franklin about a three months, at $45 per month. Sanderson and E. S. Young were there while I was. That clock was set every day at 10 a.m. It was generally behind time. The orders of this R. R. Co. were to set the clock at 10 a. m. every day by the Nashville time. I never saw the clock down or Young fixing or trying to regulate it. We worked and were governed by that clock. Sanderson did not tell Callahan what the right
47 time was nor what to set his watch by that I heard. When Callahan came the second time and enquired about No. 3, where it was, this was at 9.05 a. m., and Sanderson then told him it was reported on time at Nashville. I told him to wait a few minutes and I would telegraph and learn whether No. 3 had left South Nashville or not. The wires were busy, but I did telegraph as soon as I could, and in some 4 or 5 minutes I got a dispatch that No. 3 had left South Nashville on time, and I then went to the window to so notify Callahan, but he was gone.

E. A. YOUNG testified:

I was baggage agent of def't at Franklin when pl't'ff was hurt, and hold that position now at Birmingham, Ala. Pl't'ff came into the office and asked for No. 3. Sanderson told him it was reported on time at Nashville. Pl't'ff was about to set his time by that clock and Sanderson told him not to do so, because it had been out of time for several days.

X-examined:

I was at Franklin a year; not certain when I went there; think I went there in Jan'y, 1881, or June, 1881; not certain; that clock had been running very irregularly for some time. Pl't'ff pulled out his watch and looked at the clock and watch; he did that regularly from day to day. There was nothing else but that clock for
48 him to regulate his watch by. Sanderson did not tell him to set his watch by Sanderson's watch; never knew pl't'ff at any other time to be told not to set his watch by that clock. I took down the clock once and fixed it by putting a piece of cord in it. After the accident a few days the clock was sent to Nashville for repairs. About two weeks before the accident it was sent to Nashville for repairs. It would run right for a day or two, and then would run wrong. It did not lose ten minutes in a day, but would lose that much in a day and a half. It was the order and rule to set it every day at 10 a. m. by Nashville time. The way I know it would lose ten minutes in a day and a half was because several times they neglected to set it, and then I'd see it lost ten minutes in a day and a half. That clock was for all the employees in and around Franklin to go by, and there was nothing else to go by.

TOM. HIGHTOWER (col'd) testified:

I worked with Callahan when he was hurt. We were going along the track with the hand-car. Two men could push the car, but three generally pushed it. We put nothing on it from the time we left Franklin, except our tools, till the accident. I heard the whistle
49 once before the train reached us; train was about 500 or 550 feet from us when it whistled. I saw it when it whistled. We were trying to get the car off the track before I heard the whistle. Pl't'ff said, "Here she comes," and we began to try to get the car out of the way, and directly it whistled. Cap. Cook, one of the section hands, ran off up the bank before we let the push-car go. Pl't'ff and Baugh were at the north end of the car. We held on to the car till baggage-car passed, and then pl't'ff said, "Get out of the way." He told us that to keep us from getting hurt; don't know whether train would have struck us or not if we had not got out of the way. We tried to lift the car over against the bank, but the train was coming so fast that we couldn't. No iron rails were on the push-car at the time of the accident. If all had stuck to it and held it up we could have held it up out of the way of the passing train. There was nothing between the push-car and the bank; had often taken the push-car off and leaned it up against a bank on the roadside. It was customary to have a man out ahead of a push or hand car with a flag to watch for approaching trains when one was expected, and to signal if one approached. The push-car we were on was light, weighing 200 or 300 pounds.

X-examined:

50 Nobody ran off from the car but Cap. Cook. Engine and baggage car had passed us when pl't'ff said, "Boys, get out of the way;" train was going pretty pert, but had checked up a little. As quick as pl't'ff said "Here she comes" we all did all we could to get our push-car out of the way. Cap. was scared and ex*ecu*ted, and that made him run away up the bank. It was exciting times. I was excited too. I still work for the defendant, and am now track-walker. I can't tell when was the last time we took rails up towards Mallory's before the accident. We took rails up there every few days, but took none that day. It was customary to lift these push-cars off the track and lean them up next to the embankment. There was plenty of room to have stood this car up where the accident happened. There was no particular necessity for Mr. Callahan and his men to have remained at Franklin the morning of the accident. We were engaged while there tamping up some cross-ties on a side track. There was no broken rail or other thing to interfere with trains passing there that morning. Callahan stopped on the way 3 or 4 times that morning looking out for train No. 3, and listened for it. The accident occurred in about the highest part of the cut. I could not stand on the ground and reach up to the top of the embankment.

JACK DAVIS (col'd) testified:

Hightower, Cook, Baugh, Callahan, and myself were with the car at the time of the accident. Two or three men could push that car. We stopped and listened for trains, but heard none. The cut was about 200 yards long. Accident was deepest part of the cut, about 100 feet from the crossing at the north end of the cut; could not reach top of bank with my hand. Callahan saw smoke of the engine and said, "Here she comes," and we all tried to get car out of the way, but could not pull it over against the bank. Pl't'ff said, Get out of the way. We let go the car then and it fell against the train. The train struck it and hurt pl't'ff. Baggage car and tender had passed when pl't'ff said, Get out of the way. Cap. was at pl't'ff's end of the car, and ran up the bank before pl't'ff said, Get out of the way. It was six feet from end of cross-ties to top of the bank; nothing to detain us at Franklin the morning of the accident. We were tamping up some cross-ties on a side track; nothing the matter on the main track at Franklin that morning to prevent trains passing there. When Callahan was at the agent's office last that morning he set his watch by the clock, and told us we had a half hour to get to Mallory's. We stopped at Winston's Spring and at Sulphur
52 Spring crossing that morning and listened for the train. No flagman was sent out ahead. It was usual and customary to have one out ahead when we expected a train.

X-examined:

Sometimes we only had two men to push the car. I did not hear any whistle when pl't'ff said, Here she comes; did not hear any bell till train passed McEwen's crossing; heard the bell, but no whistle. Bell rang just before train reached us. Train was running fast. Pl't'ff said, "Let her loose." I don't reckon I would have been hurt if I had staid there. I suppose plaintiff thought we would get hurt if we staid there. When train stopped the rear car was 75 or 80 yards from us. When pl't'ff said, "Here she comes" we did everything we could to get car out of the way, and could have got it out of the way if we had had more time. When I first saw the engine it was about three telegraph poles from us—about 150 yards. When I saw the smoke of the engine it was 450 yards from us. We were all sober; had no liquor and smelt none.

DICK THOMAS (col'd) testified:

Push-car is about 8 feet long and about as wide as long. It weighs 300 or 400 pounds; would take four men to push it
53 or take it off of track. It is about four or five feet from end of cross-ties to the bank. I was sick the day of the accident to Callahan, and was not with the crew.

ROBT. RAINEY testified:

I live at Franklin. Callahan told me the agent at Franklin said, when he went to inquire about it, that the train, No. 3, was at Nashville, or was getting there; I don't know which he said. That

clock of defendant's at Franklin varied from 5 to 10 minutes a day from my watch. I compared them frequently.

JAMES MCEWEN testified:

I live about 400 yards from defendant's road on the left side going from Nashville to Franklin and near the place of this accident. I heard the whistle and noise of the train about a mile or a mile and a half this (the north) side of my house, in or about Vaughan's field. A road crosses the railroad track up there; am not certain whether I heard the whistle any more after that till just before the accident, but I heard the noise of the train all the way. The telegraph poles are from 60 to 80 steps apart; some 60 & some
54 80 steps apart, not regular. I was at my house that morning expecting the train, so that I could send into Franklin for my mail, and saw the train pass my house on its way to Franklin. The whistle blew two or three alarm blasts before the accident, and when it blew the engine was just west of the third telegraph pole from the crossing in my field. From the point at which I thought the train was when the whistle blew to the place of the collision or accident it is 384 feet. It is about five feet from the end of the cross-ties to the embankment. I don't think the engineer could have seen the hand-car before about the place where he whistled, but I never tested it to see. When the train stopped the rear car was a little beyond the 7th telegraph pole, as shown on the map. This map is not a perfect representation of the ground; it does not make the track curve enough; otherwise it is substantially correct. (The map exhibited by def't and that exhibited by *def't* may both be made a part of the bill of exceptions.) I don't remember seeing any iron rails on the ground there at the place of the accident. No one showed me the place of the accident, but I saw on the cross-ties where the car had marked them, and saw a hole
55 in the bank made by the car, and saw the negroes' tracks on the bank, and from these things located the place of the accident.

X-examined:

Trains pass my house daily; don't know how many each day; don't remember whether the passenger train that passed that evening whistled or not; don't know how many rails are in the curve. I never tested it to see whether a man on the track 375 or 400 yards on the Nashville side of the place of accident could, by standing on the track, see a man on the track at the place of the accident. I saw three or four negroes running up the bank at the time of the accident. The train was running on time that morning as it came past my place and at the usual rate of speed. The embankment was about ten or 12 feet high on northwest side of the cut and about 7 feet on the other at the place of the accident. It would have been impossible, in my opinion, for the engineer to have seen the hand or push car sooner than he did. I went to the point where he first blew and looked down the road in a few minutes after the accident. I saw the push-car as it entered the south end

of the cut, and it had no iron on it. The train was running down grade and was stopped as soon as it could have been, in my opinion.

(He also proved the photographs exhibited.)

56 ED. CORBETT testified: I was engineer on the train, No. 3, that pl't'ff was injured by. On day of accident I left Nashville on time, at 9.08 a. m.; had two brakemen, Marlin & Palmer, on the train. We were on time when the accident occurred and running at the usual rate of speed. We stopped at Brentwood; the air brakes, which were of the best pattern (Nestenhum), were all right then and continued so till after the accident; worked well and all right at the time of the accident; whistled at Mallory's, $\frac{3}{4}$ of a mile this (Nashville) side of the accident; also at Moore's lane, $1\frac{1}{2}$ — this (north) side of Mallory's.

Just this side of McEwen's I was sitting at my place in the cab of the engine, on the right-hand side. From the stock gap of McEwen, as shown on def't's map, I was looking out ahead. I saw the hand or push car of Callahan when I was about a (100) hundred yards from it—I didn't measure the distance—and immediately I blew two or three blasts of the whistle, the stock alarm signal. I reversed the engine, opened the sand-box, gave steam the reverse action—that is, put on steam to run train back. I stopped the train in 200 or 225 yards. The fireman, John Jordan, was on the en-

57 gine with me, who was also looking out ahead when the push-car was first seen. I did all that could have been done to stop my train and prevent the accident. My engine was a first-class one, as well as the cars in the train, — were in first-class running order. I had a full crew of competent men in charge of the train. I had been an engineer on the road for 5 years. Stevenson, the conductor, is dead. I stopped the train as soon as it could have been done. We had no steam on when the push-car was first seen.

X-examined:

I can stop a passenger train on level ground at the speed then going in 225 yards by reversing the engine; on down grade then, with steam off, could stop that train in 240 yards; had two coaches, a sleeper, and baggage car in the train; coaches and sleeper each 60 feet long; engine and tender each about 30 feet long; coaches and sleeper 12 to 18 inches wider than locomotive. I ran the length of the train before stopping after striking pl't'f. I blew the whistle when about in 80 yards of the place of wreck; blew it two or three blasts—not over three; had hand-brakes on the cars as well

58 as air-brakes. Hand-brakes were to be used in the event the air-brakes failed.

The fireman is here as a witness.

W. P. MARLIN testified:

I was rear brakeman. As far as I know my brake was in good order; don't remember stopping at Brentwood that day. I heard the whistle at Mallory's, and heard three blasts of the whistle just before the accident; felt the application of the air-brakes, and knew

they were in good condition and worked well. It was unnecessary for me to use my brakes so long as the air-brakes worked well. They were applied from the engine.

X-examined:

There were three blasts of the whistle in quick succession just before the accident. My brake was in good order in South Nashville, and suppose it was at time of accident. The engineer, fireman, and other men on the train were competent men.

W. A. PALMER testified:

I was front brakeman, and at time of accident was in rear part of baggage-car. My brakes were all right that morning. I felt the air-brakes and immediately stepped to the door, and then heard the whistle. I felt the air-brakes first, and then heard the whistle
59 give two or three blasts—the danger signal. We passed the place of accident a little over the length of the train before we stopped.

X-examined:

I felt the air brakes and immediately heard the crash. The feeling of the brakes and the crash were all together—all in a second. After feeling the air-brakes I went to the door and looked out before the accident.

Pfff's Testimony in Rebuttal.

Mr. MCCORMACK testified:

I have acted as foreman of section hands for this defendant for many years and know the duties and rules and regulations appertaining to that position. My position [is] the same as Callahan's. It is not usual or customary to send a flagman ahead of the push-car to signal a train, unless the train is due and expected there according to schedule time, but it is usual to send a flagman ahead if a train is expected.

FRANK COOK testified:

It was not the rule nor custom to send flagman ahead of the push or hand car unless a train is expected. If a train is not due at a place, then a flagman is not sent ahead.

JESSE BAUGH testified same as Cook:

60 Defendant read the following acts:

1. Act of the Commonwealth of Kentucky, approved March 5th, 1850, as set out in the Acts of Kentucky 1849–'50, commencing at page 427.

2. Act of the Commonwealth of Kentucky, approved March 20th, 1851, as set out in the "Acts of Kentucky 1850–'51," commencing at page 442.

3. Act of the State of Tennessee, passed Dec. 4, 1851, as set out in Acts of Tennessee 1851–'52, commencing on page 28.

4. Act of [the] State of Tennessee, passed Dec. 15th, 1857, as set

out in the "Acts of Tennessee 1857–'58," commencing on page (private acts) 20.

It is agreed that either party may read before the Supreme Court of the United States any act of the State of Kentucky or of Tennessee bearing upon this railroad company.

The defendant then introduced NEILL S. BROWN, who testified as follows:

The Acts of Tennessee for 1849–'50 was handed the witness with the request that he would turn to page 313, § 17, act of
61 Febr'y 1st, 1850. Having examined the act witness said: That is an act to incorporate the Louisville and Nashville Railroad Company; I was one of the corporators; also was one of the local board. That corporation was never organized, and it was never connected in any way with the present Louisville and Nashville Railroad Company.

Defendant then introduced Jo. C. GUILD, who testified as follows:

The Acts of Tennessee for 1849–'50 was handed the witness with the request that he would turn to page 239, act of Feb'y 9, 1850. Having examined the act witness said: That is "An act to incorporate the Nashville and Louisville Railroad Company." Witness was one of the commissioners named in the act. I know that that company was never organized. It never had any connection with the present Louisville and Nashville Railroad Company. I was one of the earliest directors also of the present Louisville and Nashville Railroad Company, and aided in getting the subscription from my native county of Sumner. I was also at an early day vice-president and attorney for the company. The main offices have always
62 been located in Louisville, Ky. The main machine and work shops are established there, and there the stockholders' meetings have always been held.

On cross-examination witness said that at the time of subscriptions called for to build this, defendant's, road he was living in Sumner county, Tenn., and an active participant in the efforts to construct this road, and that one of the points named in the charter was Gallatin, Tenn., by which the road had to go; that that county in its corporate capacity subscribed, levied, and collected a tax of $300,000 to build this road as a part of the construction fund by which this road was built, and that Davidson county, Tenn., raised $300,000 to $500,000 in the same way, which went towards building this road; that Tennesse always had a representative in the board of directors of this company, and that George A. Washington, a citizen of Robertson Co., Tenn., is now one of the vice-presidents of this railroad company.

63 *Charge of the Court.*

The court charged the jury as follows:

The court amongst other things charged the jury that the question of jurisdiction was for the court, and that the defendant had

the right to remove and had removed the cause from the State court to the United States circuit court; that the Legislature of Tennessee had not incorporated the defendant, but had merely given to it, as a corporation of the State of Kentucky, a license or privilege to extend its railroad through Tennessee from the Kentucky line to Nashville; that this case fell under the authority of the case of The Railroad Company *vs.* Harris, 12 Wallace, 65–86.

This brings us, gentlemen of the jury, to that part of the case within your province. The evidence in the case satisfies me that the defendant complied with the requirements of section 1166, Code of Tennessee, so far as the circumstances attending plaintiff's injury are concerned. Plaintiff was an employee of defendant and bound to use at least the care and diligence of a reasonable and prudent man in its service. He seems to have gone two or three times to
64 the agent at Franklin to inquire the time, thus showing that something had raised his apprehensions and put him on his inquiry. He stopped his hand-car and listened for approaching trains, and yet went into the deep cut and sharp curve, where he was hurt, without having sent any flagman or other person ahead to warn him or the train of approaching danger. In this he did not exercise reasonable care and prudence, but was guilty of negligence, so that had the people upon the train or the persons controlled by him been injured they could have recovered against his employer for his negligence. Under the facts proven in this case were you to give a verdict against the defendant, I should feel bound to set it aside and grant a new trial. In such a state of the case it is my duty to instruct you to find a verdict for the defendant, and I accordingly do so, declining to give the instructions requested by plaintiff's counsel.

To which charge the plaintiff by att'ys then and there excepted.

The plaintiff thereupon requested the court to charge the jury as follows:

1st. Whenever the engineer or fireman could by a vigilant
65 lookout ahead from the locomotive have seen the plaintiff on the track immediately the alarm whistle should have been sounded, the brakes put on, and every possible means used to stop the train and prevent the accident; and if there was a failure to do any of these things as soon as possible after the plaintiff could so have been seen by the engineer or fireman, then the defendant is liable if such failure caused the injuries.

2d. If the plaintiff could have been seen on the road by the engineer or fireman when the engine was at a distance of 375 yards from the plaintiff, and if the alarm-whistle was not sounded till the engine was within (100) one hundred yards of him, then you should find for the plaintiff.

3d. If the hand-brakes could have been used and might have aided in stopping the train, and if they were not used, then the defendant is liable.

4th. If the plaintiff was guity of negligence and if the defendants' servants failed to observe the precautions of sub-section 5 of section

1166 of the Code of Tennessee, when the plaintiff could have been seen on the road by the engineer or fireman, then the plaintiff's negligence should go in mitigation of dangers, but not in bar of his action.

66 5th. If Callahan was led astray and decided as to the true time for train by the clock at the office at Franklin, by which his movements were to be regulated, and if because of that he was led into the danger which resulted in his injuries—if, in all other respects, he acted as a reasonable and prudent man would under similar circumstances—he may recover.

6th. It is the duty of the railroad company, when it orders its employees to be governed as to time in the discharge of their respective duties to go by its clock, to have a good and well-regulated clock, regardless of reasonable trouble and expense, and if the injury in this case resulted from a failure to perform this duty, if the plaintiff was not in any fault, your verdict should be for plaintiff.

7th. When the railroad company orders its employees to be governed as to time in the discharge of their respective duties to go by its clock, put there for that purpose, it is its duty to have a good and well-regulated clock, regardless of reasonable trouble and expense, and if you shall believe from the proof in the cause that the injury in this case resulted from a failure to perform this duty, if the plaintiff was free from fault, your verdict should be for the plaintiff.

67 8th. As to whether the plaintiff was in fault or not you will look to the proof and see if his conduct was such as would have been that of a man of ordinary prudence under similar circumstances. If so, in legal contemplation he is in no fault.

9th. If the jury shall believe from the proof that it was the order of the L. and N. Railroad Company that its employees in and around Franklin should go by the clock in the telegraph office there, and if Callahan was in good faith obeying these orders, and in doing so was deceived by the indications of the face of the clock and thus led astray as to the time when No. 3 passenger train was due at the point of accident, and because of that was led into the danger resulting in his injuries, and if he, thus imperiled, did all that could reasonably be expected of a reasonably prudent man under like circumstances to prevent the injuries, then he is entitled to your verdict, and the court instructs you that this is so, notwithstanding the train was on time—in good running order—and the employees on it did all they could to prevent the accident.

10th. If Callahan was led astray by the company's clock, which he was ordered to go by, as to the time the train was

68 *the time the train was* due at the point of accident, and thus being in the cut in discharge of his duty and having used such precautions as a man of ordinary prudence would have done under like circumstances, and when he in the exercise of due diligence discovered the train approaching did all that a prudent man would do under the circumstances to prevent an accident and failed to prevent it, and he was thereby injured, he may recover such

damages as you may think under the proof he deserves, not exceeding the sum mentioned in the writ.

11th. If Callahan, by reason of the company's clock being out of time, being ordered to go by it, believed the train was not due there at the time he entered and was passing through the cut with the hand-car, and if you are satisfied from the proof that it was not customary in going with such a car along the track to send a flagman ahead when no train was due according to the company's time-piece at Franklin, then the court charges you it was not necessary for him to have a flagman in front.

As each request was read by pl't'ff's counsel the court was
69 requested to charge it, but the court refused to charge each and every request as read, and to the action of the court in so doing the plaintiff by counsel at the time excepted.

The pl't'ff also requested the court to remand the cause to the State court for want of jurisdiction, but the court refused to so remand, and the pl't'ff then and there excepted.

It is agreed that each party may read before the Supreme Court of the United States any acts of the Legislature of the State of Tenn. without setting them forth in the bill of exceptions.

To the action of the court in refusing to remand this cause to the State court, from which it was removed, and to the action of the court in charging the jury, and to the action of the court in refusing to charge as requested, and to the action of the court in overruling the plaintiff's motion in arrest of judgment for a new trial the pl't'ff excepts and excepted at the time the court so acted in each instance, and tenders this his bill of exceptions to the actions of the court, and prays that it be signed and sealed as part of the record in this cause, which is accordingly done.

D. M. KEY, *U. S. Judge.*

(Here follows diagram, marked p. 70.)

71 *Bill of Costs.*

1881. Aug. 11. Filing transcript, 10; bond, 45; rack, 50; filing, 10. Oct. 19. Plea, 10. Nov. 1st. Motion to remand, 10. Nov. 1st. Ans. to petition; 10. Dec. 12. Plea, 10. Dec. 13. Minutes, 30. 1882. Ap'l 25. Judg., 45; docket, 3.00; 25 witnesses, 2.50. May 15. Bill of exceptions, 10; 4 exhibits, 40. May 16. Minutes, 30.

MIDDLE DISTRICT OF TENNESSEE:

I, Lewis T. Baxter, clerk of the circuit court of the United States for the district aforesaid, do hereby certify that the foregoing is a true, perfect, and complete transcript and copy of the record and proceedings in a certain cause lately in said court pending, wherein Simon Callahan was plaintiff and the Louisville and Nashville R. R. Co. were defendants as fully and completely as the same still remain on file and of record in my office.

In testimony whereof I hereunto sign my name and affix the seal

of said court at office in Nashville, in said district, this 12th day of September, 1883.

[Seal Circuit Court U. S., Middle District Tenn.]

LEWIS T. BAXTER, *Clk*,
Per CHAS. NASH, *Dep'y Clk.*

Clerk's fee for transcript, &c., paid by F. E. Williams for Simon Callahan, $22.55.

72 THE UNITED STATES OF AMERICA, *ss:*

To the Louisville & Nashville Railroad Company, Greeting:

You are hereby cited & admonished to be & appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the middle district of Tennessee, wherein Simon Callahan is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected & speedy justice should not be done to the parties in that behalf.

Witness the Hon. D. M. Key, district judge of the United States for the middle district of Tennessee, at the city of Nashville, in said district, this the 10th day of December, 1883, & of the Inde-
73 pendence of the United States the 108th year.

D. M. KEY, *Judge, &c.*

74 I, G. N. Tillman, United States marshal for the middle district of Tennessee, do solemnly swear that I executed this citation as commanded by serving the same upon James Geddes, the superintendent of the Louisville and Nashville Railroad Company, on the 13th day of December, 1883, as stated in my return hereon.

G. N. TILLMAN.

Sworn to and subscribed before me this Dec'r 13, 1883.

LEWIS T. BAXTER,
Clerk U. S. Circuit Court.

[Endorsed:] 2581. Simon Callahan *vs.* L. & N. Railroad Co. Citation. My fee paid Dec. 8, '83, by F. E. Williams, att'y, $2.00. G. N. Tillman, U. S. M. Executed as commanded by serving this summons on James Geddes, superintendent of the Louisville & Nashville R. R. Co., Dec. 13, 1883. G. N. Tillman, U. S. marshal for Middle Tenn.

[Endorsed:] Sup. Court U. S. 1883. October term. No. 1173. Simon Callahan, pl'ff in error, *vs.* The Louisville & Nashville R. R. Co. Citation.

[Stamped:] Office Supreme Court U. S. Filed Feb. 14, 1884. James H. McKenney, clerk.

75 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States of America for the middle district of Tennessee, Greeting:

Because in the record & proceedings as also in the rendition of a judgment in a plea which is in the said circuit court of the United States of America for the middle district of Tennessee, before you, between Simon Callahan, plaintiff, and the Louisville & Nashville Railroad Company, defendant, a manifest error hath happened, to the great damage of said Simon Callahan, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected & full & speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly & openly, you send the record & proceedings aforesaid, with all things concern-
76 ing the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next in the Supreme Court to be then and there held, that, the record & proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right & according to law & custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this the 10th day of December, in the year of our Lord one thousand eight hundred & eighty-three, & of the Independence of the United States the 108th year.

[Seal Circuit Court U. S., Middle District Tenn.]

LEWIS T. BAXTER, *Clk.*

77 [Endorsed:] No. 2581. Simon Callahan *vs.* L. & N. Railroad Co. Writ of error. Filed Dec. 10, '83. Lewis T. Baxter, cl'k. Sup. Court U. S. 1883. Oct'r term. No. 1173. Simon Callahan, pl'ff in error, *vs.* The Louisville & Nashville R. R. Co. Writ of error.

[Stamped:] Office Supreme Court U. S. Filed Feb. 14, 1884. James H. McKenney, clerk.

78 Circuit Court of the United States for the Middle District of Tennessee.

SIMON CALLAHAN

vs.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

Know all men by these presents that we, Simon Callahan, as principal, and W. B. Bate & T. E. Williams, sureties, are held and firmly bound unto the Louisville and Nashville Railroad Company in the sum of one hundred and fifty dollars, to be paid to the said Louisville and Nashville Railroad Company; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and

severally, firmly by these presents, and our and each of our heirs, executors, and administrators.

Sealed with our seals this the 16th day of May, 1882.

Whereas the said Simon Callahan has prosecuted a writ of error to the Supreme Court of the United States to reverse the
79 judgment rendered in the above action by the circuit court of the United States for the middle district of Tennessee:

Now, the condition of the above obligation is such that if the said Simon Callahan shall prosecute his said writ of error to effect and answer all costs if he fail to make good his plea, then this obligation to be void; otherwise to remain in full force and virtue.

SIMON CALLAHAN,
By BATE & WILLIAMS, *Att'ys.*
WM. B. BATE, (*Surety.*)
F. E. WILLIAMS, (*Surety.*)

Sealed and delivered in presence of—
R. W. CANTRELL.

Approved.

D. M. KEY, *Judge, &c.*

MIDDLE DISTRICT OF TENNESSEE:

I, Lewis T. Baxter, clerk of the circuit court of the United States for the district aforesaid, do hereby certify that the foregoing
80 is a true, perfect, and complete copy of the writ-of-error bond filed in the above-entitled cause and now on file in this office.

Witness my hand and the seal of said United States circuit court at Nashville this 8th day of Feb'y, A. D. 1884.

[Seal Circuit Court U. S., Middle District Tenn.]

LEWIS T. BAXTER, *Clk.*

81 [Endorsed:] Supreme Court U. S. 1883. October term. No. 1173. Simon Callahan, pl'ff in error, *vs.* The Louisville & Nashville R. R. Co. Copy of bond.

[Stamped:] Office Supreme Court U. S. Filed Feb. 14, 1884. James H. McKenney, clerk.

Endorsed on cover: M. Tennessee C. C. U. S. No. 184. C. H. Goodlett, administrator of Simon Callahan, deceased, plaintiff in error, *vs.* The Louisville and Nashville Railroad Company. Filed 22nd October, 1883.

122-391

MAR 19 1887

In the Supreme Court of the United States,

OCTOBER TERM, 1886.

C. H. GOODLETT, Administrator of Simon Callahan, Deceased.
Plaintiff in Error,

vs.

THE LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Brief of F. E. WILLIAMS, Attorney for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

C. H. GOODLETT, ADMINISTRATOR OF SIMON CALLAHAN, DECEASED, *Plaintiff in Error.*

vs.

THE LOUISVILLE AND NASHVILLE RAILROAD CO.

Simon Callahan was a section boss of this railroad company in December, 1880, and had worked for it seven years. His section was $8\frac{1}{4}$ miles long, beginning $2\frac{3}{4}$ miles south of Franklin, Tennessee, and ending $5\frac{1}{2}$ miles north of it. On the day of this accident, December 4, 1880, passenger train No. 3, from Nashville to Franklin, was due at Franklin at 9.47 A.M.

The railroad company kept in its office at Franklin a clock, by which all the employes were required to regulate their time-pieces, and on the morning of this accident Callahan set his watch by the clock, supposing it correct. The clock was in a defective condition; would not keep correct time, but varied some ten minutes in the course of twenty-four hours. It was out of time the morning of this accident.

The railroad company contends that it told Callahan not to set his watch by the clock, because it was not correct; but Callahan denies any notice of defect, and says he thought it was keeping correct time.

There was a defect in the track near Mallory's, three miles north of Franklin, and towards Nashville.

Callahan and some of his crew got on their hand car and left Franklin to go to that defective place to repair it, and when they left Franklin had an hour and seven minutes, by Callahan's time, to reach Mallory's before the Nashville train was due there. It required only thirty minutes for the hand car to run from Franklin to Mallory's. When the car was two miles from Franklin, train No. 3, from Nashville, came in sight, running at its usual speed, say thirty miles an hour. At 9.25 A.M. it struck this hand car and broke Callahan's leg, and he brought suit to recover damages.

As the place of accident was two miles from Franklin, it would have taken the train only about five minutes to reach Franklin, which would have put it in Franklin at 9.30, or seventeen minutes ahead of time.

Here again the company insists that the train was on time.

Callahan did not send a flagman ahead, because no train was due there at that time, and it was not customary nor required to send out a flagman unless a train was due and expected according to schedule time.

As soon as the train appeared, Callahan and his crew made every possible effort to get the hand car off the track, and thereby save the train from being wrecked, and did get the car on its side, but could not hold it, and it fell back and was struck by the train and broke his leg.

The section hands would all have been killed, if they had held on to the hand car. Record, p. 18.

Here, then, Callahan and his men were on the hand car, on the track. Now, what was the duty of the men in charge of train No. 3?

STATUTE OF TENNESSEE.

Sections 1166 and 1167 of Thompson & Steger's Code of Tennessee (now sections 1298 and 1299 of Milliken & Vertrees' Code) provides as follows:

SEC. 1166. "Every railroad company shall keep the engineer, fireman or some other person upon the locomotive, always upon the lookout ahead, and when any person, animal, or other obstruction appears upon the road, the alarm whistle shall be sounded, the brakes put down, and every possible means employed to stop the train and prevent an accident.

SEC. 1167. Every railroad company that fails to observe these precautions, or cause them to be observed by its agents and servants, shall be responsible for all damages to persons or property occasioned by or resulting from any accident or collision that may occur."

The Supreme Court of the United States always follows the highest court of the State in its construction of its own constitution and laws. It is only where they have been construed differently at different times that this court has adopted as a rule of action the first decision and rejected the last.

92 U. S. R., 294.
5 Wallace, 433.
21 Wallace, 497.

The court, upon looking at the map, will remember that the train that caused the injuries was running from north to south—from Nashville to Franklin.

Now, what do we find? Callahan and his men were on the hand car, on the track, when the train came in sight. Was any one on the engine, on the lookout ahead of the train, as required by statute; if so, how far ahead could he have seen these men on the track?

Blackburn, Riley, Baugh and others, entirely disinterested witnesses, by actual test and measurement, demonstrated that the engineer or another person on the locomotive, if he had been on the lookout ahead, could have seen Callahan and the hand car on the track, 375 yards from the engine, and it is so shown on the map. Record, pp. 19, 20.

Nor do I understand the railroad company as seriously, if at all, contesting this point.

Corbett, the engineer of train No. 3, says that he saw the hand car and blew the alarm whistle, when about 100 yards from it. Then, on cross examination, he says it was 80 yards. He does not pretend that he or the fireman could not have seen the hand car before he got within 80 or 100 yards of it. He simply says that he saw it when that far from it. He does not even say that he applied the air brakes, though he does say he did all that could have been done to stop the train, after he saw the obstruction. Record, p. 26. That is not enough. He or the fireman must have seen it as soon as, by a vigilant lookout ahead, it could have been seen. Admitting all that Corbett says to be true, still the company utterly fails to show a compliance with the statute as construed by the Supreme Court of Tennessee.

The engineer says the fireman was on the engine with him, and was in attendance as a witness, and yet the record fails to show that he was introduced as a witness, or any reason for not introducing him.

Is it not fair to infer that he would have corroborated plaintiff's witnesses and shown that he could have seen the obstruction long before he did?

The record shows that this trial lasted four days. If the engineer or fireman saw the obstruction on the track as soon as he could have seen it, the defendant had ample time, during the trial, to demonstrate it by actual test. Record, p. 13.

So, I insist, that the proof absolutely demonstrates that the statute was not complied with, whereas, it requires the defendant to show affirmatively that it did comply with its provisions.

STATEMENT OF ERRORS RELIED ON.

1. The court below erred in holding that the defendant had the right to remove this cause from the State court.

13 Wallace, 270.
3 Wood's Reports, 657.

2. The court erred in refusing to remand this cause to the State court.

3. The court erred in taking the case from the jury, and in saying to them: "The evidence in the case satisfies me that the defendant complied with the requirements of section 1166, Code of Tennessee, so far as the circumstances attending plaintiff's injuries are concerned."

4. The court erred in charging the jury as follows: "Under the facts proven in this case, were you to give a verdict against the defendant, I should feel bound to set it aside and grant a new trial. In such a state of the case it is my duty to instruct you to find a verdict for the defendant, and I accordingly do so, declining to give the instructions requested by plaintiff's counsel."

5. The court erred in charging the jury, in effect, that the plaintiff did not exercise reasonable care, but was guilty of negligence, and that this negligence defeated any right of recovery.

6. The court erred in withdrawing the case from the jury when there were disputed facts in issue.

105 U. S. R., 347.

And, whether the facts were disputed or undisputed, if different minds might honestly have drawn different conclusions from them, the case should have been left to the jury.

17 Wallace, 657.

And this applies to the refusal of the court to give in charge to the jury the requests from 5 to 11 inclusive.

7. The court erred in refusing to give in charge to the jury requests 1, 2, 3 and 4.

8. The court erred in refusing to give in charge to the jury requests 5 to 11 inclusive, and taking the case from the jury, instead of letting them pass upon the facts involved in those requests.

CONSTRUCTION OF THE TENNESSEE STATUTE BY THE SUPREME COURT OF THE STATE.

The statute is stringent, but in proportion to the danger from unrestrained power in the hands of these great and powerful corporations must be the degree of diligence to which they are held in the protection and preservation of human life, though it result in harsh verdicts against them.

9 Heis., 19.

The injunctions of the statute are imperative and peremptory; and the consequence of disregarding them is absolute and unconditional liability. The statute makes no exceptions and tolerates no excuses.

9 Heis., 843, 852.

Unless the defendant show that all the statutory precautions were observed it is liable, though the jury be of opinion that the accident would have occurred had they been observed.

9 Heis., 20, 26.

The statute demands an absolute obedience to its provisions, whether they seem necessary or not.

9 Heis., 827.
11 Heis., 383, 385.
5 Heis., 266.

Although there was gross negligence and folly on the part of the plaintiff in being on the track, yet the very fact that an obstruction was on the track, by the Code, is made the basis of the

requirement that all the precautions prescribed shall be immediately put into requisition to warn of danger, and to avoid injury to person or property.

11 Heis., 457.

It was intended to enforce the strict performance of these duties by fixing arbitrarily upon the company a liability in case of their neglect.

5 Lea, 691.

Upon the construction of these statutes there has been "no variableness or shadow of turning."

9 Heis., 828.

The lookout must not only be on the engine, but he must be in such position as to see an obstruction on the track as soon as it is possible for him to see it; and if the obstruction is on the track, and he does not see it, but could have seen it, by a vigilant watchfulness, then he was not in the discharge of his duty, and the defendant is liable.

5 Lea, 540, 543.

The statute means that some person shall be so situated on the lookout that he can see ahead. If the engineer cannot see, the fireman must; if the fireman cannot, the engineer must.

1 Lea, 525.

The instant that the lookout sees, *or, by constant lookout, might have seen,* the obstruction on the track, he must sound the alarm whistle, reverse the engine, apply the brakes, and comply with all the provisions of the statute, if possible, otherwise the defendant will be liable.

9 Heis., 827.
5 Lea, 540.

If the company fail to observe the statutory precautions, it is responsible, regardless of the contributory negligence of the person injured, however gross it may be. Contributory negli-

gence, when it exists, must be considered in mitigation of damages, but cannot bar a recovery.

6 Heis., 174.
11 Heis., 457.
1 Lea, 523, 524.
12 Lea, 200, 207.

If the company fail to observe these precautions, and an employ is injured, the company is liable, and the doctrine of fellow-servants has no application.

9 Heis., 941.

An exception exists in case of an employe, only where he is injured about the company's yards and depots.

9 Heis., 270.
7 Baxter, 239.

These authorities are cited in support of exceptions to the charge of the court, and to his refusal to give the charges requested.

F. E. WILLIAMS,
Attorney for Plaintiff in Error.

122-391

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1886.

No. 184.

C. H. GOODLETT,

Administrator of Simon Callahan, Deceased, Plaintiff in Error,

VS.

Louisville & Nashville R. R. Co.,

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Argument of BATE & WILLIAMS, Counsel for Plaintiff in Error.

C. H. GOODLETT, ADMINISTRATOR,

vs.

THE LOUISVILLE & NASHVILLE RAILROAD CO.

No. 184. *In error to the Circuit Court of the United States for the Middle District of Tennessee.*

STATEMENT OF THE CASE.

Simon Callahan, who has since died, a citizen of Tennessee, brought suit in a court of that State against the Louisville & Nashville Railroad Company, to recover damages for a personal injury received by him while in the employment of the defendant company, on the Nashville & Decatur Railroad, in Tennessee, which was operated by the defendant under a lease.

The defendant company removed the case to the Circuit Court of the United States for the Middle District of Tennessee, on the ground that it had been incorporated by the State of Kentucky alone, and was not a citizen of Tennessee.

Application was made to the Federal Court to remand the case to the State court, on the ground that defendant company

had been chartered by the State of Tennessee, as well as by the State of Kentucky, and that it was for this reason, in a litigation in Tennessee, to be regarded as a "citizen" of Tennessee; but the motion to remand was overruled.

There was a trial, and verdict and judgment for the defendant, and the plaintiff thereupon brought up this case.

One question is as to the *citizenship* of the defendant company.

ARGUMENT.

We concede for the plaintiff in error that the defendant company was first chartered by the State of Kentucky.* But we insist that it was *also* chartered by the State of Tennessee; and that its *status* is the same in Tennessee as if it had been originally created by that State, because that State *adopted* it.

Such would be the law if these were the facts in the case.

Muller vs. Dows, 94 *U. S.*, 447.
Uphoff vs. St. Louis, etc., R. R. Co., 5 *Fed. Rep.*, 547.
R. R. Co., vs. Whitton's Adm'r, 13 *Wall.*, 270.

We furthermore concede, if the legislation of Tennessee had no greater effect than merely to license and permit the Louisville & Nashville Railroad Company, as a foreign corporation, to have "a right of way to construct its road" in Tennessee, that such license would not convert the company into a corporation of the latter State. But we submit that Tennessee has done more than this—has not only granted a right of way *to* construct a road, but has conferred *power* to construct it, and also *charter privileges* in such terms as to adopt this corporation and make it its own.

The question is always a question of *intent* (12 *Wallace*, 83); and all the statutes which relate to the question must be read by themselves. (*R. R. Co. vs. Schutte*, 103 *U. S.*, *p.* 140.)

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* The counsel for the defendant has filed a compilation of statutes entitled: "Appendix to brief of Ed. Baxter of counsel for defendant in error," and we shall refer to that appendix instead of to the original session laws.

Different Legislatures of Tennessee had occasion to legislate with respect to this Louisville & Nashville Railroad Company, and whatever may be the construction which this Court may place upon the language they employed, one thing is most obvious, that *they* thought they were adopting this company and conferring organic powers upon it as an adopted corporation of the State of Tennessee, and not merely granting a right of way. An examination of the statutes will sustain this statement.

The first act passed by Tennessee was enacted December 4th, 1851, and is entitled "An act to *incorporate* the Louisville & Nashville Railroad Company." (*Appendix*, *p.* 37.)

January 10th, 1852, another act was passed, entitled "An act to *amend* the *charter* of the Louisville & Nashville Railroad Company, passed the 4th of December, 1851." (*Appendix*, *p.* 45.)

December 15th, 1855, still another act was passed, entitled: "An act to amend an act, entitled 'An act to *charter* the Louisville & Nashville Railroad Company, and the several acts amending said act passed by the legislatures of *Kentucky and Tennessee*. (*Appendix*, *p.* 45.)

March 20th, 1858, a fourth act was passed entitled "An act to amend the *charter*, and several acts amendatory thereto, passed by the Legislature of *Tennessee and Kentucky incorporating a company* to construct a railroad from the city of Louisville to the city of Nashville." (*Appendix*, *p.* 53.)

These titles of acts unmistakably indicate that the Legislatures of Tennessee *thought* they were creating a corporation in part, and that the Louisville & Nashville Railroad Company owed its *existence* to *Tennessee* as well as to Kentucky. In this opinion the Legislature of Kentucky also shared. On the 21st day of February, 1868, the Legislature of that State passed an act to amend the charter of this company. Among other

things this act so amended the charter as to authorize the company to consolidate with other roads. It authorized the consolidating companies to adopt such name as they might choose, and expressly provided that in such name it should have all the powers and privileges conferred upon said company "by the laws of *Kentucky and Tennessee*."

It being apparent now what the Legislature of Tennessee *intended* to do, and also that the Legislatures of both States *believed* that Tennessee had succeeded therein, the question is whether in point of *fact* such intent had been carried into effect. We submit that it had.

The Louisville & Nashville Railroad Company was chartered by the State of Kentucky March 5th, 1850. (*Appendix*, 20, 32.) This charter act was amended by that State March 20th, 1851. (*Appendix*. 32, 36.) An examination of the charter contained in these acts will disclose that no power is granted or conferred to build a foot of road or to operate a road *in Tennessee*, even upon the condition of procuring that State's consent. It empowers the company to build a road from Louisville in the *direction* of Nashville, but only *to the Tennessee line*. So much of the act as confers the powers upon the company is contained in the fourteenth section of the act of 1850, and is as follows:

"SEC. 14. That the President and Directors of sa'd Company are hereby vested with all powers and rights necessary to the construction of a railroad from the city of Louisville *to the Tennessee* line, in the *direction* of Nashville." (*Appendix*, 27.)

Where, then, did the company get the *power* to construct a road in Tennessee, except from Tennessee? The *first* section of the Tennessee act of December 4th, 1851, standing *alone*, is susceptible of the construction that *it* only grants a mere right of way, but the act as a whole does more. It abrogates and

declares void (in the sixth section) two sections of the charter granted by Kentucky, and the seventh section adds four sections to the charter granted by the State of Kentucky, with the declaration that these four added sections "are hereby made a part of the *charter* of the Louisville & Nashville Railroad Company." (*Appendix*, 38, § 7.)

December 15th, 1855, the Legislature of Tennessee passed an act, entitled "An act to amend an act to charter the Louisville & Nashville Railroad Company, and the several acts *amending* said act passed by the Legislatures of *Kentucky and Tennessee*," which made certain provision with reference to a lien in the event "said company shall receive the *aid* of the State of Tennessee." This act also contained other important amendatory provisions. The first section empowered the company to sell its bonds. (*Appendix*, 45.)

The third section provided what disposition should be made of the profits realized on the stock in the company held by the city of *Louisville, Ky.* (*Appendix, p.* 47); and also that the holders of the bonds to be issued might demand and receive *stock* for their bonds, upon certain named contingencies. (*Appendix, p.* 47). Sections 5 and 16, authorized the tax-payers of Sumner and Davidson Counties, in Tennessee, to demand stock for the money paid by them as taxes, used to pay the interest on the bonds issued by those counties to aid in the construction of the road.

Section 11 of said act *consolidated* the Louisville & Nashville Railroad Company and the Edgefield & Kentucky Railroad Company (a Tennessee corporation) for the purpose of building a bridge across the Cumberland River at Nashville, and gave each company $100,000 for that purpose. (*Appendix, p.* 51.)

The twelfth section of the act also conferred upon these two companies above named the *power* to construct a road not ex-

ceeding ten miles in length to be used in *common*. (*Appendix*, p. 51.)

Section 14 provided for the *addition* of two directors to the number allowed by the *original* charter; and Section 15 conferred *power* to make certain agreements with *any* county through which the road passed. (*Appendix*, p. 53.)

Section 6 conferred upon the company the power to *buy negroes* to be used for the construction or operation of the road; and then when they should no longer be needed for that purpose, to sell or *hire* them, either in *Kentucky or Tennessee*. (*Appendix*, p. 49.)

On the 15th day of December, 1857, an act was passed by the Legislature of Tennessee granting State aid of $10,000 per mile to this road, as seems to have been contemplated by the act of December 15th, 1855. It is fair to assume this could not have been done on any other hypothesis than that this company was a domestic, or Tennessee company. (*Appendix*, p. 43.)

The act of Tennessee passed March 20th, 1858, after declaring in its title that it is an act to amend the *charter* granted by the Legislatures of Kentucky and Tennessee, provides as follows:

"SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the several acts of the States of *Kentucky and Tennessee*, be and are hereby, *amended* by the additional sections." (*Appendix*, p. 53.)

Section 2 confers power to issue bonds.

Section 4 provides for a sinking fund (to meet the bonds) to be set apart by the "President and Directors of said company." (*Appendix*, p. 55.)

Section 5 provides that "the issue of the bonds herein authorized shall be conclusive evidence of the acceptance of the

company of this as *an amendment to their charter.*" (*Appendix, p.* 56.)

Such are a few of the important powers conferred upon this company by the State of Tennessee.

The terms in which these powers are conferred; the fact that all of them are important, and that many of them were *essential* (to enable the road to get from the State line to Nashville); the pecuniary aid of $10,000 per mile, and $100,000 for a bridge, granted by Tennessee; the concurrent legislative interpretation of these statutes by both States, as being *charter* statutes conferring organic power upon the company, and not simply granting a mere right of way—make it indubitable that the State of Tennessee has *adopted* this company and conferred upon it like powers to those granted to corporations of its own creation.

One State can make a corporation of another State, as there organized and conducted, a corporation of its own, *quoad* any property within its territorial jurisdiction.

> *Graham vs. B., H. & E. R. R. Co.*, 118 U. S., 161, 168.
> *Railroad Co. vs. Harris*, 12 Wallace, 65, 82.

And this is allowable, for the reason that a corporation of one State has no existence as a legal entity or person in another State, except under and by virtue of its incorporation by the latter State.

> *Memphis Railroad Co. vs. Alabama*, 107 U. S., 585.
> *Muller vs. Dows*, 94 U. S., 447.

Numerous cases have been decided by this Court, having greater or less bearing upon the question involved in this case. In *Railroad Company vs. Vance* (96 U. S., 450), an Indiana railroad company leased a road chartered by Indiana and Illinois. A doubt having been suggested as to the validity of the lease,

the Legislature of Illinois passed an act to cure it. The second section of the act declared that the lessees "shall be a corporation in this State;" and the Court held that it was.

The statutes of Tennessee do not formally *proclaim* that the Louisville & Nashville Railroad Company is a corporation of Tennessee, but it does more—it *makes* it one by the nature of the powers it confers, and the manner in which it confers them.

In the *Memphis & Charleston Railroad Company vs. Alabama* (107 U. S. 581), it was decided that an act of the Legislature of Alabama, passed January 7th, 1850, and very similar to these Tennessee acts, not only granted a right of way to a railroad company which had been previously chartered by Tennessee, but created a corporation. The case was of course determined upon the phraseology of the particular statute, and is not therefore conclusive in a case where, as in this, the language of the statute is not precisely the same. But when *Railroad Company vs. Vance* (96 U. S. 450); *Railroad Company vs. Whitton's Administrator* (13 Wall., 273); *Muller vs. Dows* (94 U. S. 446); *Memphis & Charleston Railroad Company vs. Alabama* (107 U. S. 581); *Stone vs. F. & L. Trust Company* (116 U. S. 308); *Graham vs. B., H. & E. R. R. Co.* (118 U. S. 161), and *Uphoff vs. Chicago I. & N. O. Co.* (5 Fed. Rep., 545) are considered, all together, it is settled, that when it is apparent from the powers conferred, the language used, and the manner in which the powers conferred are to be exercised, that the second State means and intends to *create* a corporation in whole or in part; or to adopt one already created by another State, and give it a *status* such as would have been given to the corporation as a "person" of its own creation, then such corporation will be regarded as a corporation of the latter State, with respect to suits brought in such State.

Inasmuch as this corporation is not only indebted to the State of Tennessee for a large share of the corporate *powers* it

possesses, but for its very existence, since the generous manner in which the State bestowed pecuniary aid and assistance enabled it to be constructed, it ought to be *very clear* that this creature of Tennessee cannot be brought to justice in her courts before it is so decided. Under the circumstances doubts, if any there be, must be resolved in favor of the State.

For these reasons we respectfully submit that the case should be reversed, to the end that it may be remanded to the State court of Tennessee in which it was originally instituted.

Respectfully submitted,

BATE & WILLIAMS,
Counsel for Plaintiff in Error.

122-391

Supreme Court, U. S.
FILED
APR 30 1887
JAMES H. McKENNEY,
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1886.

NO. 184

C. H. GOODLETT,
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Plaintiff in Error,

vs.

LOUISVILLE & NASHVILLE R. R. CO.,
Defendant in Error.

ADDITIONAL BRIEF OF F. B. WILLIAMS, COUNSEL FOR PLAINTIFF.

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vs.

THE LOUISVILLE & NASHVILLE RAILROAD CO.,

Defendant in Error.

This case was argued at a former day of the term. On the 18th day of April, 1887, the following order was made by the Court:

Leave is granted counsel on both sides to file additional printed arguments on the third, fourth, fifth, and sixth assignments of error at any time before Monday, May 2d, if they desire to do so. It is the wish of the Court that this be done.

Availing himself of that permission, the counsel for the plaintiff in error submits the following additional argument:

The Court charged the jury as follows:

The Court amongst other things charged the jury that the question of jurisdiction was for the Court, and that the defendant had the right to remove, and had removed, the cause from the State Court to the United States Circuit Court; that the Legislature of Tennessee had not incorporated the defendant, but had merely given to it, as a corporation of the State of Kentucky, a license or privilege to extend its railroad through Tennessee from the Kentucky line to Nashville; that this case fell under the authority of the case of *The Railroad Company vs. Harris*, 12 Wallace, 65-86.

This brings us, gentlemen of the jury, to that part of the case within your province. The evidence in the case satisfies me that the defendant complied with the requirements of Section 1166, Code of Tennessee, so far as the circumstances attending plaintiff's injury are concerned. Plaintiff was an employe of defendant, and bound to use at least the care and diligence of a reasonable and prudent man in its service. He seems to have gone two or three times to the agent at Franklin to inquire the time, thus showing that something had raised his apprehensions and put him on his inquiry. He stopped his hand-car and listened for approaching trains, and yet went into the deep cut and sharp curve, where he was hurt, without having sent any flagman or other person ahead to warn him or the train of approaching danger. In this he did not exercise reasonable care and prudence, but was guilty of negligence, so that had the people upon the train or the persons controlled by him been injured, they could have recovered against his employer for his negligence. Under the facts proven in this case, were you to give a verdict against the defendant, I should feel bound to set it aside and grant a new trial. In such a state of the case it is my duty to instruct you to find a verdict for the defendant, and I accordingly do so, declining to give the instructions requested by plaintiff's counsel.

The assignments of error referred to in the order of the 18th of April are as follows:

THIRD—The Court erred in taking the case from the jury, and in saying to them: "The evidence in the case satisfies me that the defendant complied with the requirements of Section 1166, Code of Tennessee, so far as the circumstances attending plaintiff's injuries are concerned."

FOURTH—The Court erred in charging the jury as follows: "Under the facts proven in this case, were you to give a verdict against the defendant, I should feel bound to set it aside and grant a new trial. In such a state of the case it is my duty to instruct you to find a verdict for the defendant, and I accordingly do so, declining to give the instructions requested by plaintiff's counsel."

FIFTH—The Court erred in charging the jury, in effect, that the plaintiff did not exercise reasonable care, but was guilty of negligence, and that this negligence defeated any right of recovery.

SIXTH—The Court erred in withdrawing the case from the jury when there were disputed facts in issue.

The charge of the Judge presiding below shows that the question of *negligence* was considered by him as one determinative of the plaintiff's *right* to recover. Said the Judge: "Plaintiff was an *employe* of defendant and bound to use at least the care and diligence of a reasonable and prudent man in its service. . . . He went into the deep cut and sharp curve, where he was hurt, without having sent any flagman or other person ahead to warn him or the train of approaching danger. In

this he did not exercise reasonable care and prudence, but was guilty of negligence."

And for this reason he said: "The evidence in the case satisfied me that the defendant complied with the requirements of Section 1166, Code of Tennessee, *so far as the circumstances attending plaintiff's injury* are concerned."

It is obvious that the plaintiff's "negligence" and "want of care" in going into the cut and sending no flagman forward, were the chief "circumstances attending the plaintiff's injury," which *satisfied* His Honor that the railroad company had complied with the requirements of the Code of Tennessee. But, as he had that conception of the law, he naturally concluded that he could not allow a verdict against the defendant (if one should be rendered) to stand; and he *directed* a verdict to be returned for the defendant.

We respectfully submit that this is an erroneous interpretation of the statutes regulating the running of railroads in Tennessee.

The sections of the Code material to be understood are as follows:

SEC. 1298. (1166.) "Every railroad company shall keep the engineer, fireman, or some other person upon the locomotive, always upon the lookout ahead, and when any person, animal, or other obstruction appears upon the road, the alarm whistle shall be sounded, the brakes put down, and every possible means employed to stop the train and prevent an accident."

SEC. 1299. (1167.) "Every railroad company that fails to observe these precautions, or cause them to observed by its agents and servants, shall be responsible for all damages to persons or property occasioned by or resulting from any accident or collision that may occur."

SEC. 1300. (1168.) "No railroad company that observes, or causes to be observed, these precautions, shall be responsible for any damages done to person or property on its road. The proof that it has observed said precautions shall be upon the company."

Code (*M. & V.*), §§ 1298–1300.

The Supreme Court of Tennessee has frequently and *consistently* construed this statute. (*Hill vs. L. & N. R. R. Co.*, 9

Heis., 828.) It is the settled construction of that Court that these precautions are not required to be observed for the safety of the persons on board the cars so much as for the security of persons or animals upon the track.

L. & N. R. R. Co. vs. McKenna, 7 *Lea*, 313.
Railroad v. Gardner, 1 *Lea*, 691.

When any person, animal, or other obstruction appears upon the road, the whistle must be sounded, the brakes put down, and every possible means employed to *stop* the train and prevent an accident. Practically it might be supposed that a person with intelligence to appreciate and understand the danger, walking upon a railroad track, and seemingly in the full possession of his strength and faculties, would be more likely to get out of the way than a mere animal would, and that it would be but reasonable to *require* him to so do. But that is not the law of Tennessee. The precautions required must be observed with the same care and particularity as to a man walking on the track as with respect to an animal or a fallen tree. The statute tolerates no "speculations" on the part of an engineer as to what a man on the track will do. It is his duty to sound the alarm and put down the brakes the *instant* he sees a man on the track. (*Hill vs. L. & N. R. R. Co.*, 9 *Heis.*, 827.)

The statute is *imperative*. If the company fail to observe *all* the statutory requirements, it is responsible even though the plaintiff was guilty of contributory negligence. Contributory negligence does not affect the plaintiff's *right* to recover, but must be considered in *mitigation of damages*.

N. & C. R. R. Co. vs. Nowlin, 1 *Lea*, 523.
Railroad vs. Gardner, 1 *Lea*, 688, 692.
L. & N. R. R. Co. vs. Conner, 2 *Bax.*, 388.
N. & C. R. R. Co. vs. Smith, 6 *Heis.*, 174.
Railroad vs. Walker, 11 *Heis.*, 385–6.

It is plain from the brief charge, or more accurately, from the statement of His Honor's reasons for withdrawing the case from the jury, that he had an erroneous and inaccurate notion of the legal effect of the "negligence" of the plaintiff. It is *not* the law of Tennessee that the plaintiff was "bound to use at *least* the care and diligence of a reasonable and prudent man." Contributory negligence may reduce the amount of the recovery, but it does not defeat the plaintiff's right to recover something of a railroad where there has been a failure on the part of the company to observe any of the statutory requirements.

The fact that the injured person is an *employe* of the company is immaterial, so far as the *general lines* of the road are concerned; but there is one exceptional case wherein the fact that the person guilty of contributory negligence is an *employe* is material, and goes to the very right of action. "The statute, in terms, makes no exception." (9 *Heis.*, 280–1.) But the Courts of Tennessee have made one, which is that this statute does not apply to the *employes* of the company engaged in "making up" trains and switching cars, *etc.*, *in the yards and depots* of the company.

L. & N. R. R. Co. vs. Robertson, 9 *Heis.*, 276, 282.
Haley vs. Mobile, etc., R. R. Co., 7 *Bax.*, 239, 244.
Moran vs. N. & C. R. R. Co., 2 *Bax.*, 379, 381.

The reason is that in such places and when so engaged the trains are always run slowly; the very business of the employes requires them constantly to be upon the track and to cross it. An observance of the statute governing the *running* of trains would render it almost impracticable to make up trains and do the necessary yard business of the company; and the employes know that by the rules of the company special regulations govern in the yards and depots. (9 *Heis.*, 281.) But the very reasons upon which the exception has been based restrict that exception to the yards and depots. The presence of employes on

the track in the country where the train runs at its highest speed, is not constant or expected, and is only occasional; and then not with a view of working about the train or cars, but of repairing the track. As a train speeds through the country there is no more likelihood that a person who is seen upon the track is an employe than that such person is a stranger, and hence the exception is not extended beyond the company's depots and yards. It follows that, under the circumstances of this case, the company was bound to observe all the statutory precautions, and the plaintiff's "negligence" could not, as the trial judge erroneously assumed, affect the plaintiff's right to recover.

II.

The precautions which the statute prescribes are of two kinds —general and particular. The particular, specified in the statute, are: (*a*) To always keep a lookout ahead; (*b*) when any person, animal, or other obstruction appears upon the track to sound the alarm whistle; (*c*) and put the brakes down. The general precautions are demanded by the words, "every possible means." By this is understood that the engine shall be reversed (7 *Lea*, 557; 9 *Heis.*, 863); that all the brakes were applied (9 *Heis.*, 864); that there were sufficient brakemen (9 *Lea*, 313); that the machinery was in good order, and up to the present state of the art; and that the employes used all the means at their command to stop the train and prevent the accident (9 *Heis.*, 19, 20; *Code of Tenn.*, (*M. & V.*), §§ 1298, 1301, *Notes*).

And the burden of proof is on the company to show that all these requirements were observed.

Code of Tenn. (*M. & V.*), § 1300.
L. & N. R. R. Co. vs. Parker, 12 *Heis.*, 49.

Another thing must be noted in this connection, and that is, the provision that some person shall always be upon the look-out ahead, means that as soon as the person or animal on the track *could* be seen by the lookout, it *must* be seen. It is not sufficient for the company to show that as soon as it *was* seen everything possible was done to stop the train, but the company must also show that the person or animal *was* seen as soon as it *could* have been seen by the lookout, doing his duty at his post.

Railroad vs. White, 5 *Lea*, 540.
L. & N. R. R. Co. vs. Conner, 9 *Heis.*, 26.

We will now examine the evidence and see how these precautions were observed.

By subsequent measurements and experiments it was demonstrated that Mr. Callahan *could* have been seen by the lookout on the engine *three hundred and seventy-five yards* distant from the point where the accident occurred.

J. W. Blackburn, *Trans.*, 20.
Jesse Baugh, *Trans.*, 18-19.
John Riley, *Trans.*, 20.

The engineer, while he claims to have been on the lookout, admits that when he first saw the push-car it was only about 100 yards distant. (*Trans.*, 26). James McEwin, who happened to be passing, says the train, when it whistled, was about 128 yards away. (*Trans.*, 25). Tom Hightower, colored, says about 170 yards. (*Trans.*, 23). Altogether they show that when the whistle sounded the train was only a little over 100 yards from the push-car, and the engineer says he sounded the whistle as soon as he saw the push-car, and that he was on the lookout at the time.

Yet the plaintiff's evidence and experiments show that the engineer *could* and ought to have seen the push-car *three hundred*

and seventy-five yards away. If they are right, the engineer ran more than 250 yards after he *should* have seen the push-car and have sounded the whistle before he did do so—a distance in which he could easily have stopped the train. Upon that state of facts, the defendant is clearly liable. Here was conflicting evidence upon a material point.

There is another material point upon which the evidence conflicts.

There was a clock at the depot in Franklin by which the time-pieces of the railroad employes were required to be regulated. (*Trans.*, 15, 21.) It was out of order and ran too slow. (*Trans.*, 19, 21.) Mr. Callahan set his watch that morning by the clock. (*Trans.*, 15.) Witnesses for the defendant state that the agent at Franklin cautioned Mr. Callahan not to set his watch by this clock, as it was then unreliable. (*Trans.*, 22, 21.) Mr. Callahan denies this. (*Trans.*, 17.) Mr. Callahan was injured at 9:25 o'clock A. M. by his time, or 9:20 by the railroad clock. (*Trans.*, 15, 16.)

According to that time—which was the same as the depot clock by which his watch had been set—the train, "No. 3," was running about eighteen minutes *ahead* of time. (*Trans.*, 16.) But the truth seems to be that the train was on time, and the mistake was that Callahan's watch and the Franklin clock were too slow.

It is apparent from the evidence that Callahan proceeded with great caution. He stood up continually on the car that he might see ahead, and the car was stopped several times to listen for any approaching train. (*Trans.*, 15, 18.)

Before they left Franklin, Callahan asked the station agent several times as to the whereabouts of "No. 3," and could get

no satisfaction. (*Trans.*, 15.) He complained at the agent, and said it was the agent's business to know where the train was. (*Trans.*, 20.) It is apparent that the presence of Callahan and the push-car on the track at the time it was struck by the train was largely due to the fact that he was deceived by the company's time-piece. It was defective and out of fix. We concede that the evidence of the defendant tends to show that Callahan was warned against setting his watch that morning by the clock, but Callahan is emphatic that he was not, and that no answers could be gotten to his inquiries as to the whereabouts of "No. 3." According to the hour shown by the clock, there was ample time for Callahan to get to the point of his destination before the coming of train "No. 3." A defective rail demanded his attention, and it is obvious that it was important that it should be looked after at the earliest possible moment.

If it were true that the clock was inaccurate and unreliable, and that Callahan had no knowledge of this fact communicated to him, or if it were true that the push-car could have been seen long before it was seen by the engineer, had he been doing his duty as look-out, the defendant is liable. These two facts are disputed. Witnesses testify positively on both sides as to them. Why, then, should His Honor have withdrawn the case from the jury and *directed* a verdict for the defendant?

III.

If there is any evidence tending to prove the issue on either side, it is error to withdraw the case from the jury.

Hickman vs. Jones, 9 *Wall.*, 197.
Manchester vs. Ericsson, 105 *U. S.*, 347.
U. S. vs. Tulotson, 12 *Wheat.*, 180.

Directions to find for a party can only be given where there is no conflicting evidence.

Klein vs. Russell, 19 *Wall.*, 433.
Moulor vs. Ins. Co., 101 *U. S.*, 708.

A case should not be withdrawn from a jury unless facts are undisputed or testimony so conclusive that a verdict in conflict with it would be set aside.

Conn. Ins. Co. vs. Lathrop, 111 *U. S.*, 612.
Phœnix Ins. Co. vs. Doster, 106 *U. S.*, 30.

It is true the rule is that when the evidence given at the trial, with all the *inferences* which the jury could justifiably draw from it, is insufficient to support a verdict, so that such verdict, if returned, *must* be set aside, the Court may direct a verdict for the defendant.

Schofield vs. C. & St. P. R'y Co., 114 *U. S.*, 619.

But that is not this case. There is evidence tending to show that the lookout on the engine could and ought to have seen the push-car long before he did; and if that evidence is true, under the settled law of Tennessee the defendant would be liable.

There is evidence tending to show that Callahan was misled by the railroad clock by which the railroad hands were required to be governed; that it was out of order, and not keeping good time. Mr. Callahan says he was not informed of its condition. If so, it may be said that this defective clock led to and caused the injury.

That is to say, there was sufficient evidence for the plaintiff, if true, to sustain a verdict.

Whether it was true is a matter which the plaintiff was entitled to the opinion of the jury upon.

For these errors the plaintiff respectfully asks a reversal.

F. E. WILLIAMS,

Counsel for Plaintiff in Error.

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JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1886.

No. 184.

C. H. GOODLETT,
Administrator of Simon Callahan, Deceased,
Plaintiff in Error,
vs.
LOUISVILLE & NASHVILLE R. R. CO.,
Defendant in Error.

In error to the Circuit Court of the United States for the Middle District of Tennessee.

Argument of ED. BAXTER, of Counsel for Defendant in Error.

MARSHALL & BRUCE, NASHVILLE.

STATEMENT OF CASE.

Simon Callahan, a citizen of Tennessee, brought suit against the Louisville and Nashville Railroad Company in the Circuit Court of Williamson County, Tennessee, to recover damages for personal injuries received by him while an employe of defendant, on the Nashville and Decatur Railroad, which the defendant was operating under a lease.

The defendant, upon entering its appearance in the State Court, applied for a removal of the cause to the Circuit Court of the United States, for the Middle District of Tennessee, upon the ground that the defendant was incorporated by the State of Kentucky and not by the State of Tennessee, and therefore was a citizen of Kentucky.

The State Court ordered the removal of the cause; the United States Circuit Court declined to remand it, and upon trial in the latter court, there was verdict and judgment for defendant, and plaintiff brought the cause to this court by writ of error, where it has been revived in the name of his administrator.

The principal question involved is the citizenship of the Louisville and Nashville Railroad Company, and we propose to confine our argument to that question. We have compiled all the statutes of Kentucky and Tennessee which we regard as involved in this controversy, and submit them in a separate pamphlet as an appendix to this argument.

ARGUMENT.

I.

We insist that the Louisville and Nashville Railroad Company is a Kentucky corporation; that it has never been incorporated by the State of Tennessee; and that the act relied upon by our opponents, as constituting an incorporation of the company by the State of Tennessee, is nothing more than a grant to the Kentucky corporation, of a right of way to construct its railroad from the Kentucky line to Nashville, and a license to that company to exercise, in the State of Tennessee, in the operation of that part of its road, the rights, powers, and privileges conferred upon the company by its Kentucky charter.

The company was incorporated by the Legislature of Kentucky by an act approved March 5th, 1850, amended by an act approved March 20th, 1851. (See Appendix, pages 20–36.)

The charter contains the usual corporate powers to construct a railroad "from the city of Louisville to the Tennessee line, in the direction of Nashville," and the amendment authorized the company to connect its road "with any railroad extending to Nashville."

On December 4th, 1851, the Legislature of Tennessee passed an act in the words and figures following

CHAPTER XXIII.

AN ACT to incorporate the Louisville and Nashville Railroad Company.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the right of way for the construction of a railroad from the line between the States of Kentucky and Tennessee, so as to connect the cities of Louisville and Nashville by railroad communication, be, and is hereby, granted to the Louisville and Nashville Railroad Company, incorporated by the Legislature of Kentucky, with all the rights, powers, and privileges, and subject to all the restrictions and liabilities set forth and prescribed in a charter granted to said company by the Legislature of Kentucky, and approved March the 5th, 1850, and the amendments thereto, passed by said Legislature, and approved March the 20th, 1851, for the term of nine hundred and ninety-nine years, except as further provided in this act.

SEC. 2. *Be it further enacted*, That said company shall construct said railroad from the boundary line between said States, beginning at said line where it shall be intersected by that part of said railroad which is to be within the State of Kentucky, to (a point within or convenient to) the city of Nashville; *Provided*, That in the construction of said railroad said company shall commence at each end of the line at the same time, and continue the work from each end until said railroad is completed; *Provided further*, That said company shall not be compelled to use the capital stock subscribed and paid in by the citizens, companies, corporations, or counties in the State of Kentucky in the construction of that part of said railroad lying in the State of Tennessee until the part thereof lying in Kentucky is completed.

SEC. 3. *Be it further enacted*, That so soon as said company shall have completed five miles of said railroad from Nashville they may commence and prosecute their business, as provided in the twenty-first section of said charter; that the tariff of charges for the transportation of passengers, and for goods, wares, merchandise, and other articles and commodities, shall be equal on all parts of said railroad in proportion to distance, and that equal facilities for the transportation of the same in either direction shall be furnished.

SEC. 4. *Be it further enacted*, That the stockholders in the State of Tennessee shall be entitled to be represented in said company by directors residing in Tennessee in proportion to their stock, to be chosen by the stockholders of the company in the manner and at the time the other directors are chosen.

SEC. 5. *Be it further enacted*, That nothing in this act, or in said charter or amendments thereto, shall be so construed as to prohibit the Legislature of Tennessee from passing any law authorizing the construction of railroads within this

State parallel to, crossing, or to unite with said railroad from Louisville to Nashville, and the State of Tennessee reserves the right so to do.

SEC. 6. *Be it further enacted*, That the twentieth section of said charter and the fourth section of the amendments thereto shall be void, and of no force or effect within this State.

SEC. 7. *And be it further enacted*, That the twenty-third, twenty-fourth, twenty-fifth, and twenty-ninth sections of the Act of 11th December, 1845, incorporating the Nashville & Chattanooga Railroad Company, be, and are hereby, made a part of the said charter of the Louisville & Nashville Railroad Company, to be in force within this State, and that this bill shall take effect from and after its passage; *Provided*, That the Commonwealth of Kentucky shall grant to the State of Tennessee, or to such companies as the General Assembly may charter, the right of way from Nashville to intersect with the Lexington and Danville Railroad at Danville, Harrodsburg, or such other point on that road as the company may designate, provided it does not interfere with any vested rights of the citizens of Kentucky, with the like powers and privileges granted to this company.

SEC. 8. *Be it further enacted*, That the company shall bring said railway to the city of Nashville, or South Nashville, and locate their depot convenient to the Nashville & Chattanooga Railroad, so as to form the connection.

JORDAN STOKES,
Speaker of the House of Representatives.

M. R. HILL,
Speaker of the Senate.

Passed December 4th, 1851.

Our opponents place great stress upon the title of the act, which is "An Act to *incorporate* the Louisville and Nashville Railroad Company." But in the case of *Hadden vs. The Collector*, 5 Wall., 110, this Court use the following language: "The title of an act furnishes little aid in the construction of its provisions. Originally, in the English courts, the title was held to be no part of the act; no more, says Lord Holt, than the title of a book is a part of the book. It was generally framed by the Clerk of the House of Parliament where the act originated, and was intended only as a means of convenient reference. At

the present day the title constitutes a part of the act, but it is still considered as only a formal part; it cannot be used to extend or to restrain any positive provisions contained in the body of the act. It is only when the meaning of these is doubtful that resort may be had to the title, and even then it has little weight. It is seldom the subject of special consideration by the Legislature."

If, then, the title cannot be used to extend the positive provisions contained in the body of the act, we will confine ourselves to a discussion of those provisions.

1. It will be noticed that there is nothing in the body of the act which purports to incorporate individuals into a body corporporate, or which purports to adopt as a corporation of Tennessee a corporation previously existing under the laws of Kentucky. It is usual in charters of incorporation to specify certain individuals, and to declare them to be incorporated under a certain corporate name; or, if the individuals are not specified, they are referred to as a class capable of identification, and incorporated as a class.

In the second section of the charter of this company, granted by the State of Kentucky, the subscribers to the capital stock were, as a class, incorporated into a company by the name of the Louisville and Nashville Railroad Company; but in the Tennessee act there is no mention made of individual corporators, either by name, or by reference to a class.

2. The Tennessee act does not purport to grant corporate powers to the Louisville and Nashville Railroad Company; on the contrary, there is nothing but a "right of way" granted to that company.

3. There is no mention made in the act of a Louisville and Nashville Railroad Company, incorporated by the Legislature

of Tennessee; the only Louisville and Nashville Railroad Company mentioned in the act, is the "Louisville and Nashville Railroad Company, *incorporated by the Legislature of Kentucky.*"

4. There is no reference in the act to any charter granted to said company by the Legislature of Tennessee; the only charter referred to is a "charter granted to said company *by the Legislature of Kentucky.*"

5. The act does not confer any original rights, powers, or privileges, upon the company. It simply gives to the company the right of way, to construct its road, "with all the rights, powers, and privileges" prescribed in the charter granted "*by the Legislature of Kentucky.*"

6. The fourth section provides that the stockholders in the State of Tennessee shall be entitled to be represented "in said company," by directors residing in Tennessee, in proportion to their stock; to be chosen by the stockholders of the company, in the manner and at the time the other directors are chosen.

To our minds, this section is positively conclusive that it was not intended to create a new corporation of the same name in the State of Tennessee. The words "said company" necessarily refer to the only company which had been previously mentioned in the act, and that company was "the Louisville and Nashville Railroad Company, *incorporated by the Legislature of Kentucky.*"

It is manifest that it was the intention of the fourth section, that the Tennessee stockholders should not organize a separate corporation, but should subscribe for stock in the "Louisville and Nashville Railroad Company, *incorporated by the Legislature of Kentucky.*" There was to be but one Board of Directors, to be chosen by all the stockholders of the company; and the Tennessee stockholders could only insist upon having Tennessee

directors in the Kentucky company in the proportion which the Tennessee stock bore to the entire stock of the company.

By an act of the Legislature of Tennessee, passed December 15th, 1857 (see Appendix, page 44), it was enacted, "that the Board of Directors of the Louisville and Nashville Railroad Company be, and they are hereby, vested with the power to elect one or more Vice-Presidents, one of whom shall reside in the State of Tennessee, who, together with the directors residing in the State of Tennessee, *may* be constituted a local board, and to whose management *may* be submitted the construction of that part of the road which lies in the State of Tennessee, *subject to the control of the President and directors of the Louisville and Nashville Railroad Company*, and exercise such other and further powers as the board may from time to time confer. The Board of Directors of the Louisville and Nashville Railroad Company shall prescribe the duties and define the powers of the Vice-President. The Board of Directors of the Louisville and Nashville Railroad Company shall have power to fix the salary of the Vice-President in Tennessee, and the Vice-President in Tennessee may be elected from or outside of the local board."

With this act before us, it is impossible to believe that the Legislature of Tennessee intended by the act of December 4th, 1851, to incorporate a new company in Tennessee. If such had been their intention, they certainly would have entrusted the construction and management of the road from the Kentucky line to Nashville, to the Tennessee corporation; but the act of December 15th, 1857, shows that the Tennessee part of the road, as well as the Kentucky part, was to be constructed and managed by the Louisville and Nashville Railroad Company, incorporated by the Legislature of Kentucky. A certain number of directors, and one Vice-President were to be chosen from Tennessee, and the company was authorized to constitute the Ten-

nessee Vice-President and directors, a local board to manage the Tennessee part of the road; but it was not made compulsory upon the company at all, and as a matter of fact the optionary power was never exercised.

It is absurd to suppose that the Kentucky company could fix the salary of the Tennessee Vice-President, and could control the action of the local board in the management of the Tennessee part of the road, if according to the theory of our opponents, a separate and distinct corporation had been created by the act of December 4th, 1851, for the express purpose of constructing and managing that part of the road.

In the case of the *Ohio and Mississippi Railroad Company vs. Wheeler*, 1 Black, 292, it appeared that the Ohio and Mississippi Railroad Company was chartered by an act of the Legislature of Indiana, passed February 14th, 1848. On the 15th of March, 1849, the Legislature of Ohio passed an act reciting that "the Legislature of Indiana on the 14th day of February, 1848, passed an act incorporating the Ohio and Mississippi Railroad Company," and enacting "that the corporate powers granted to said company by the act of Indiana, incorporating the same, be recognized." And on the 24th of January, 1851, the Legislature of Ohio passed another act, authorizing an extension of the road to the city of Cincinnati, and the third section of this act undertook to declare that the intention of the first section of the act of March 15th, 1849, "was to recognize, affirm, and adopt the charter of the said Ohio and Mississippi Railroad Company, as enacted by the Legislature of the State of Indiana." (See 1 Black, pp. 293–4.)

The company was plaintiff in that suit, and described itself in its own declaration as "a corporation *created by the laws of the States of Indiana and Ohio.*" (See 1 Black, 287.)

It therefore became unnecessary for the Court to decide whether the Ohio statutes had the effect of creating a separate

corporation in Ohio, or of simply granting a license to the Indiana corporation. It is true that the Court say, on page 297, "that a corporation by the name and style of the plaintiffs, appears to have been chartered by the States of Indiana and Ohio," but as plaintiff's own declaration had admitted that fact, it was of course unnecessary for the Court to construe the Ohio statutes. Assuming the plaintiff's construction to be correct, and therefore that it had been chartered by both States, the Court, on page 298, held that the Ohio and Mississippi Railroad Company in Indiana, was distinct and separate from the corporate body of the same name in Ohio.

But in the case of *Railroad Company vs. Harris*, 12 Wall., 83, the Court restrained and qualified the case of the *Ohio and Mississippi Railroad Company vs. Wheeler* in some of the language used in the opinion. They say: "We will add, however, that as the case appears in the *report*, we think the judgment of the Court was correctly given. *It was the case of an Indiana railroad company, licensed by Ohio*, suing a citizen of Indiana in the Federal Court of that State."

If, now, we will compare the language of the Ohio statutes, involved in the case of the *Ohio and Mississippi Railroad Company vs. Wheeler* with the Tennessee Act of December 4th, 1851, we will see that the Ohio statutes were much stronger than the Tennessee statute. The Ohio statutes not only recognized the corporate powers granted to the company by the Indiana charter, but they adopted the charter of the company as enacted by the Legislature of Indiana. This would seem almost equivalent to re-enacting the Indiana charter in Ohio. In the Tennessee Act of December 4th, 1851, while there is language recognizing the rights, powers, privileges, and liabilities set forth in the charter granted to the Louisville and Nashville Railroad Company by the Legislature of Kentucky, there is nothing adopting that charter as a charter in Tennessee.

The case of *Ohio and Mississippi Railroad Company vs. Wheeler*, as restrained and qualified by the *Railroad Company vs. Harris*, 12 Wall., 83, is, therefore, a direct authority in our favor upon the construction of the Tennessee Act of December 4th, 1851.

In the case of the *Railroad Company vs. Harris*, 12 Wall., 66, it appeared that on the 28th of February, 1827, the State of Maryland incorporated the company known as the Baltimore and Ohio Railroad Company, for the purpose of constructing a railroad from the city of Baltimore to some point on the Ohio River. Eight days afterwards the State of Virginia passed an act which reads thus: "Whereas an act has passed the Legislature of Maryland, entitled 'An Act to incorporate the Baltimore and Ohio Railroad Company,' in the following words and figures, viz: [*Setting out the Maryland Act.*] Therefore, *Be it enacted by the General Assembly*, That the same rights and privileges shall be, and are hereby, granted to the aforesaid company within the territory of Virginia as are granted to them within the territory of Maryland. The said company shall be subject to the same pains, penalties, and obligations as are imposed by said act; and the same rights, privileges, and immunities which are reserved to the State of Maryland, or to the citizens thereof, are hereby reserved to the State of Virginia and her citizens, except as to making lateral roads, and that the road shall not strike the Ohio at a point below the mouth of the Little Kanawha; that the words "other property," in the eleventh section of the Maryland Act, shall not be construed to extend to any property other than materials necessary for the road, works, and buildings; and that in procuring land and materials for the road they shall pursue the course pointed out by the Virginia laws."

There are two striking analogies between this Virginia statute and the Tennessee statute of December 4th, 1851. In both statutes reservations are made relative to the construction of

lateral roads, and in both statutes special provisions are made in relation to the exercise of eminent domain. In two other respects however, the Virginia statute is very much stronger than the Tennessee statute:

1. It sets out in words and figures the Maryland act in full, thereby making it a part of the Virginia statute, and it might have been argued with great force, that the Virginia statute thereby re-enacted the Maryland charter and made it a charter for the company in Virginia.

2. The Virginia statute declares, "that the same rights and privileges shall be and are hereby granted to the aforesaid company, within the territory of Virginia, as are granted to them within the territory of Maryland." But the Tennessee statute simply enacts "that the right of way" be, and is hereby, granted to the Louisville and Nashville Railroad Company, incorporated by the Legislature of Kentucky, "with all the rights, powers, and privileges set forth and prescribed in a charter granted to said company by the Legislature of Kentucky."

In other words, the Tennessee statute simply gives to the Louisville and Nashville Railroad Company such rights, powers, and privileges set forth in its Kentucky charter *as were necessary to the use and enjoyment of the grant of the right of way* for the construction of its railroad from the Kentucky line to Nashville, without creating a new corporation in Tennessee; but the Virginue statute gave to the Baltimore and Ohio Railroad Company, which was unquestionably a corporation in Maryland, *all* the rights and privileges which had been granted to the company by the State of Maryland.

This Court, however, looked at the object and intention of the Legislature of Virginia, rather than at the mere words employed in the statute. They say (on page 81): "The company was chartered to construct a road in Virginia, as well as in Mary-

land; the latter could not be done without the consent of Virginia; that consent was given upon the terms which she thought proper to prescribe. With a few exceptions, not material to the question before us, they were the same as to powers, privileges, obligations, restrictions and liabilities, as those contained in the original charter. The permission was broad and comprehensive in its scope, BUT IT WAS A LICENSE AND NOTHING MORE. It was given to the Maryland corporation as such, and that body was the same in all its elements and its identity afterwards, as before. In its name, locality, capital stock, the election and power of its officers, in the mode of declaring dividends, and doing all its business, its unity was unchanged—only the sphere of its operations was enlarged."

We may remark here, that the Louisville and Nashville Railroad Company has always acted as one corporation. It has but one set of stockholders, one Board of Directors, one President, one corps of administrative officers, one principal place of business, viz., at Louisville: all of its stockholders' meetings are held at that place, all of its archives are kept there, and in the language of the court just cited, "in its name, locality, capital stock, the election and power of its officers, in the mode of declaring dividends and doing all its business, its unity has remained unchanged, and the only effect of the Tennessee statute of 1851 has been to enlarge the sphere of its operations."

It further appeared in the case of *Railroad Company vs. Harris* (page 67), that on the 2d of March, 1831, an act of Congress was approved which reads thus: "Whereas it is represented to the present Congress that the Baltimore and Ohio Railroad Company, incorporated by the General Assembly of the State of Maryland, by an act passed on 28th of February, 1827, are desirous, under the powers which they claim to be vested in them by virtue of the provisions of the before mentioned act, to construct a lateral branch from the said Baltimore and Ohio

Railroad to the District of Columbia; therefore be it enacted, etc., that the Baitimore and Ohio Railroad Company, incorporated by the said act of the General Assembly of the State of Maryland, shall be, and they are hereby authorized, to extend into and within the District of Columbia a lateral railroad such as the said company shall construct, or cause to be constructed, in a direction towards the said District, in connection with the road they have located and are constructing from the city of Baltimore to the Ohio River, in pursuance of said act of incorporation, and the said Baltimore and Ohio Railroad Company are hereby authorized to exercise the same powers, rights and privileges, and shall be subject to the same restrictions, in the construction and extension of the said lateral branch road into and within the said District, as they may exercise, or be subject to, under or by virtue of the said act of incorporation, in the extension and construction of any railroad within the State of Maryland, and shall be entitled to the same rights, benefits, and immunities in the use of said road, and in regard thereto, as are provided in the said charter, except the right to construct any lateral branch road or roads in said District from said lateral roads."

It will be noticed that there is a striking analogy between the act of Congress and the Tennessee statute of December 4th, 1851. The act of Congress does not set forth the Maryland charter in full, as did the Virginia statute, nor does the Tennessee statute set forth the Kentucky charter in full. The act of Congress refers to the Baltimore and Ohio Railroad Company as incorporated by the General Assembly of the State of Maryland, just as the Tennessee statute refers to the Louisville and Nashville Railroad Company as incorporated by the Legislature of Kentucky. The act of Congress authorizes the Baltimore and Ohio Railroad Company to extend its road into the District of Columbia, just as the Tennessee statute gives to the Louis-

ville and Nashville Railroad Company the right of way to extend its road from the Kentucky line to Nashville. The act of Congress authorizes the Baltimore and Ohio Railroad Company to exercise in the District of Columbia the same powers, rights, and privileges in the construction and extension of its lateral road as it was authorized to exercise under its act of incorporation in the State of Maryland; and so the Tennessee statute authorizes the Louisville and Nashville Railroad Company, in the construction of its railroad from the Kentucky line to Nashville, to exercise all the rights, powers, and privileges set forth in its charter granted by the Legislature of Kentucky. The act of Congress expresses what is manifestly implied in the Tennessee statute—to-wit: that the rights, powers, and privileges which are to be exercised under that statute are to be exercised in the construction and extension of the road, and are not to embrace the right or power of being a corporation in the territory into which the extension was to be made. On page 80 the Court use this language: "When the case was re-argued, as directed by this court, the counsel for the company admitted that the acts of Congress in question were only enabling acts, and that they did not create a new corporation; but they insisted that the acts of Virginia were of a different character, and that they worked that result. As regards the point under consideration, we find no substantial difference. In both the original Maryland act of incorporation is referred to, but *neither expressly, or by implication, created a new corporation.*"

The case of *Railroad Company vs. Harris*, as just stated, was twice argued. It has been referred to, recognized, and approved, in 13 Wall., 284, *Railway Company vs. Whitton*; 96 U. S., page 375, *ex-parte Schollenberger;* 96 U. S., 457, *Railroad Company vs. Vance;* 104 U. S., 9, *Railroad Company vs. Koontz*, and 106 U. S., 121, *Steamship Company vs. Tugman.*

Other cases have been differentiated from it, but in all of them its authority has been recognized as unquestioned.

In the case of *Pennsylvania Company vs. St. Louis, Alton and Terre Haute Railroad Company*, 118, U. S., 295, 296, this Court, speaking through Mr. Justice Miller, say: "It does not seem to admit of question that a corporation of one State, owning property and doing business in another State, by permission of the latter, does not thereby become a citizen of this State also. And so a corporation of Illinois, authorized by its laws to build a railroad across the State from the Mississippi River to its eastern boundary, may, by permission of the State of Indiana, extend its road a few miles within the limits of the latter, or, indeed, through the entire State, and may use and operate the line as one road by the permission of the State, without thereby becoming a corporation or a citizen of the State of Indiana. Nor does it seem to us that an act of the Legislature conferring upon this corporation of Illinois, by its Illinois corporate name, such powers to enable it to use and control that part of the road within the State of Indiana, as have been conferred on it by the State which created it, constitutes it a corporation of Indiana.

It may not be easy in all such cases to distinguish between the purpose to create a new corporation, which shall owe its existence to the law or statute under consideration, and the intent to enable the corporation already in existence under laws of another State to exercise its functions in the State where it is so received.

To make such a company a corporation of another State, THE LANGUAGE USED MUST IMPLY CREATION OR ADOPTION in such form as to confer the power usually exercised over corporations by the State, or by the Legisture, and such allegiance as a State corporation owes to its creator. *The mere grant of privileges or powers to it as an existing corporation, without more, does not do*

this, and does not make it a citizen of the State conferring such powers."

We submit that this case now before the Court falls exactly within the principles laid down in the case just cited.

The Tennessee statute, passed December 4th, 1851, was the "mere grant of privileges or powers" to the Louisville and Nashville Railroad Company, a then existing corporation under the laws of Kentucky, *it contains no words "of creation or adoption;"* it does not create a new or additional corporation in Tennessee, nor does it adopt as its own the Kentucky corporation; it simply grants to the Kentucky corporation the right to use the Kentucky charter in Tennessee, for the extension of the railroad from the Kentucky line to Nashville, a distance of only forty-five miles.

In the case of *Williams, vs. Missouri, Kansas and Texas Railway Company*, 3 Dill., 268, it appeared that the Missouri, Kansas and Texas Railway Company was incorporated by the State of Kansas; that it purchased and was operating a part of the line of the Tebo and Neosho Railroad Company, incorporated by the State of Missouri. The statue of Missouri authorizing the purchase of a railroad in that State, by a railroad company of another State, enacted, that the purchase might be made upon such terms as might be agreed upon between the respective companies, and that the purchasing company should possess and exercise all the rights, powers, and privileges, conferred by the general laws of that State upon railroad corporations organized thereunder, and should be subject to all the duties, liabilities and provisions of the laws of that State concerning railroad corporations, as fully as if incorporated by that State.

It was claimed that the Missouri, Kansas and Texas Railway Company, by virtue of the purchase aforesaid, under said statute became, as to the line thus purchased, a corporation of the

State of Missouri. Judge Dillon, after giving to the Missouri statute, and the decisions of the Supreme Court in analogous cases, a careful consideration, says (pages 272–273), "After an attentive examination of the statute of Missouri in question, under which the defendant purchased a part of the line of the Tebo and Neosho Company, and constructed the road it operates in the State of Missouri, it is our opinion that the defendant did not thereby cease to be, even in the State of Missouri, a Kansas corporation; nor did it become as to the road within the State of Missouri, a new and distinct corporation, created by the laws thereof. There is no language in the Missouri act *which re-incorporates it, or which purports to create a new corporation*, but the whole scope of that part of it conferring upon corporations of another State the power to purchase and operate roads in Missouri is, that such corporations retain their identity and remain foreign corporations, but subject to taxation, and to all the duties, liabilities, and provisions of the laws of Missouri, the same as corporations created under such laws." He then refers to the case of *Railroad Company vs. Harris*, 12 Wall., 65, and follows it as controlling the case before him. (See also 7 Bush, 116, *Martin vs. M. & O. R. R.*)

In the case of *Moore vs. C., St. P., M. & O. R. R. Co.*, 21 Fed. Rep., 818, it appeared that the Chicago, St. Paul, Minneapolis and Omaha Railroad Company was chartered by the State of Wisconsin; and the Legislature of Minnesota afterwards passed an act authorizing the company to acquire, maintain, and operate railroads in the State of Minnesota, and providing that said "company, its successors and assigns, shall, in exercising the power of eminent domain, by this act conferred, and in all proceedings and appeals therein, be taken and held in all courts and places, *to be a domestic corporation*; and provided further, that in all suits and proceedings, upon causes of action arising in this State, in which said company shall be a party, (it) *shall be deemed for all purposes a domestic corporation*."

Notwithstanding this broad language, the Court held that the statute *was a mere license, and did not create a new corporation in Minnesota;* that the obvious intent of the statute, taken as a whole, was to give certain privileges to a foreign corporation, on condition that for certain purposes it should consent to be treated as a domestic corporation; that the statute did not intend to create a domestic corporation, nor to give to a foreign corporation the right to become a domestic corporation.

That the proviso in the statute was merely an indirect way of imposing upon a foreign corporation, as a condition of its doing business in Minnesota, that it would not remove its controversies to the Federal Court—a condition which this Court has held to be void.

Before leaving this point it may be well to allude to the fact that on the 1st of February, 1850, the Legislature of Tennessee incorporated a company by the name of the Louisville and Nashville Railroad Company. (See Appendix, page 1.)

The act authorized that company to be connected with, and form part of a corporate body, created, or to be thereafter created, by the Legislature of the State of Kentucky. That company, however, was never organized. No steps were ever taken towards its organization, as proven by Hon. Neill S. Brown, one of the charter members, and as a fact, it never was connected with, or formed any part of, the present Louisville and Nashville Railroad Company. The charter fell still-born, and no attempt to revive it has ever been made. (See Transcript, p. 28.)

On the 9th of February, 1850, the Legislature of Tennessee passed an act to incorporate the Nashville and Louisville Railroad Company. (See appendix, page 3.) The charter provided that the company, when formed, should have corporate existence in both Tennessee and Kentucky, and that it should

"form one body politic and corporate, in deed and law, in the States aforesaid, and by the name and for the purposes aforesaid." Hon. Jo. C. Guild, one of the charter members, testifies that no steps were ever taken to organize this company. We are not aware that its charter was ever enacted by the State of Kentucky. Certain it is, that as a matter of fact, that company never was, in any way, connected with the present Louisville and Nashville Railroad Company. (See Transcript, page 28.)

Now, if the present Louisville and Nashville Railroad Company had desired a Tennessee charter, how easy it would have been to have organized under the act of February 1st, 1850, so as to have connected the Tennessee corporation, provided for by that act, with the Kentucky corporation? And is not the fact that such course was not taken, persuasive, if not conclusive, that the very object of procuring the passage of the act of December 4th, 1851, was to secure a right of way from the Kentucky line to Nashville, and not embarrass itself by the organization of a separate corporation in Tennessee? By procuring the passage of the act of December 4th, 1851, there would be but one corporation, and it a corporation of Kentucky.

If the statute of February 1st, 1850, had been acted under, there would have been one corporation in Kentucky and another in Tennessee bearing the same name, and connected together; but still the annoyance and inconvenience of two organizations would have remained.

And so, if the Louisville and Nashville Railroad Company had desired to form one body politic and corporate, which, however, should have a corporate existence in each of the States, then it would have been easy to have organized under the act of February 9th, 1850, which chartered the Nashville and Louisville Railroad Company.

The fact that it declined to act or organize under that charter is persuasive, if not conclusive, that it did not desire to or-

ganize a corporation of that character. It did not wish to form a company that should have corporate existence in each of those States; on the contrary, it desired to form a corporation which should owe its existence and creation to the State of Kentucky alone, with simply a right of way from the Kentucky line to Nashville. It therefore declined to act either under the Act of February 1st, 1850, or the Act of February 9th, 1850, and applied for and procured the passage of the Act of December 4th, 1851, granting it a license and right of way into Tennessee.

II.

The following cases may be cited against us:

1. *Railroad Company vs. Vance*, 96 U. S., page 450. In that case the Indianapolis and St. Louis Railroad Company was chartered by the State of Indiana (page 450). On the 11th of September, 1867, it leased the road of the St. Louis, Alton, and Terre Haute Railroad Company, chartered by the States of Indiana and Illinois. Some doubt having been expressed as to the validity of the lease under the laws of Illinois, an act of the General Assembly of that State was approved March 11th, 1869, the first and second sections of which are given below. The first section is not copied in the report, but we have copied it from the private laws of Illinois of 1869, Volume 3, page 316. The second section is quoted in the report of the case on page 453.

The two read as follows:

An Act relating to the Indianapolis and St. Louis Railroad Company, and to authorize the extension of said railroad.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly.* That the lease of the St. Louis, Alton and Terre Haute Railroad Company, and the property and road thereof, to the Indianapolis and St. Louis Railroad Company, under which the railroad extending from Terre Haute,

in the State of Indiana, to East St. Louis, in the State of Illinois, is now operated, be and stand confirmed, according to the terms of said lease; *provided, however*, that nothing in this act shall be construed to release the said lessors from any debt, cause of action, or contract now existing against them.

SEC 2. *Be it enacted, etc.*, That the said lessees, their associates, successors and assigns, *shall be a railroad corporation in this State*, under the said style of the Indianapolis and St. Louis Railroad Company, and shall possess the same or as large powers as are possessed by said lessor corporation, and such other powers as are usual to railroad corporations. Said Indianapolis and St Louis Railroad Company may, and are hereby authorized, to extend said line of road from any point on the same between the cities of Pana and Litchfield, on said road, or from either of said points westward to the Mississippi River, etc.

Mr. Justice Harlan, in delivering the opinion of the Court (on pages 456–57), uses the following language: "That act was something more than a mere license to an Indiana corporation to exert its corporate powers, and enjoy its corporate rights and privileges in another State. *Such would doubtless have been the case had the act closed with the first section*, as it would have done had the General Assembly intended nothing more than to confer upon a corporation of another State authority to extend its operations by carrying on railroad business in Illinois. We cannot thus restrict the effect of the act, without disregarding wholly the ordinary meaning of the plain words of its *second* section, which declares that the lessees, their associates, successors, and assigns, *shall be a railroad corporation in the State of Illinois.* It does more: It gives the style by which that corporation shall be known; still further, *it does not authorize the complainant corporation to exercise in Illinois the corporate powers granted by the laws of Indiana*, but confers, by affirmative language, upon the corporation, *which it declares shall be a railroad corporation in Illinois*, the same, or as large powers, as are possessed by an Illinois corporation, the St. Louis, Alton and Terre Haute Railroad Company, and in addition, such other powers as are usual to railroad corporations."

The difference between the Illinois statute, involved in that case, and the Tennessee statute of December 4th, 1851, involved in this case, is, that the *second* section of the Illinois statute plainly declared that the Indiana corporation *should be a railroad corporation in the State of Illinois;* but the Tennessee statute does not declare that the Kentucky corporation shall be a corporation in Tennessee.

The Court decided in so many words, that if the Illinois statute had closed with the *first* section of it, it would have been a mere license to the Indiana corporation to exert its corporate powers, and enjoy its corporate rights and privileges in another State. Such a license is defined by the Court as "conferring upon the corporation of another State, authority to extend its operations by carrying on railroad business in Illinois." The Tennessee act of December 4th, does this and nothing more. Its whole effect is, to authorize the Louisville and Nashville Railroad Company, "*incorporated by the Legislature of Kentucky*," to exercise its corporate powers, and enjoy its corporate rights and privileges in the State of Tennessee; or in other words, it does no more than to "confer upon that corporation authority to extend its operations by carrying on railroad business in Tennessee."

The Court, on page 458, refer to the case of *Railroad Company vs. Harris*, and say that there is no substantial analogy between the two cases; they say "that the Virginia act (in the Harris case) did not purport to make the Maryland corporation a corporation of Virginia, nor did it contain any language from which could be inferred a purpose to create thereby a new and distinct corporation in Virginia. On the contrary, the Illinois act of 1869, declares in express terms, that certain parties *shall be a railroad corporation in that State*, under a designated name, with authority to exercise not the powers which had been granted by the State of Indiana to another corporation of the

same name, created under the laws of that State, but the same powers which were possessed by a corporation theretofore created under the laws of Illinois."

And here we may remark, that the Tennessee statute of December 4th, 1851, differs from the Illinois statute in the same way that the Virginia statute differed from it. The Tennessee statute *does* authorize the Louisville and Nashville Railroad Company to exercise the rights, powers and privileges prescribed in the charter granted to said company by the Legislature of Kentucky, just as the Virginia statute authorized the Maryland corporation to exercise all the rights, powers and privileges set forth in the Maryland charter; and it does not, like the Illinois statute, confer upon it the powers of any corporation then or theretofore created under the laws of the State of Tennessee.

We see, therefore, that so far as the case of the *Railroad Company vs. Vance* construes the *second* section of the Illinois statute, it is not analogous to the case at bar; and that in its construction of the *first* section of that statute, it follows the case of *Railroad Company vs. Harris*, approving the construction of the Virginia statute, as made by this Court in 12 Wall., 65, and is therefore not only a direct approval of that case, but a weighty authority for us in this case.

2. The case of *Uphoff vs. The Chicago, Illinois and New Orleans Railroad Company*, 5 Fed. Rep., 545, may also be cited against us. In that case one company was chartered by the laws of Louisiana and Mississippi, and was operating a line of railroad from New Orleans to Jackson, Miss., and another company under the laws of Mississippi and Tennessee, was operating a road from Jackson, Miss., to Jackson, Tenn., and thence to the southern line of Kentucky.

An act of the General Assembly of Kentucky was approved March 18th, 1872, ch. 585—see Acts of Kentucky, 1871–2, Vol. 2

—entitled, "An act to authorize the Mississippi Central Railroad Company to extend their road through and into the State of Kentucky." The preamble and first section are as follows:

"WHEREAS, The Mississippi Central Railroad Company, a corporation chartered by the General Assembly of Mississippi and Tennessee, is running and operating its road from Canton, Mississippi, as far north as Jackson, Tennessee, with corporate powers to extend said road to any point on the line between Tennessee and Kentucky, looking to a further extension into and through the State of Kentucky; and whereas said company desires to extend said road—by a main line and branches, to the several points hereinafter designated, with power to connect with other roads: Therefore, *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

SECTION 1. That the said Mississippi Central Railroad Company *be, and the same is hereby, declared a body politic and corporate*, with power to sue and be sued, plead and be impleaded, to contract and be contracted with, to have perpetual succession, to make by-laws, and to have, exercise, and enjoy, all the rights, powers, privileges, and franchises necessary to carry out the rights and powers herein conferred, *for the purposes of extension of said road and branches, and its connections as hereinafter declared and authorized.*"

This act is not quoted in the opinion of the Court, but we have copied all of it that is material, from the pamphlet Acts of Kentucky, referred to above.

In November, 1877, the two corporations before mentioned were, by appropriate legislation in Louisiana, Mississippi, and Tennessee, consolidated into one, and by an act approved March 11th, 1878, ch. 395, the General Assembly of Kentucky ratified, or affirmed, the act and the consolidation, "*and chartered the new consolidated company in Kentucky.*" See 5 Fed. Rep., p. 546.

Judge Hammond, on page 547, uses this language: "I should think the *first* of the Kentucky statutes, above referred to, had no other effect than to authorize the Mississippi Central Railroad Company, to do business in Kentucky, were it not that

the *second* act seems designed to remove any possible doubt on the subject by making it distinctly a Kentucky corporation. It is clearly a case of the adoption by Kentucky of the *consolidated* corporation as its own, and *it* must be held to be a Kentucky corporation, at least for all purposes of jurisdiction."

The resemblance between this case and the case of the *Railroad Company vs. Vance*, 96 U. S., 457, upon which we have commented, is striking indeed.

Judge Hammond refers to the case of *Railroad Company vs. Harris*, 12 Wall., 65, and concedes the doctrine of that case, stating that: "If the effect of the legislation be to license a foreign corporation to do business in the State, it does not become a corporation of that State, but is suable there, as any other non-resident found within the district would be, under the Acts of Congress regulating jurisdiction." But, he says: "If the effect of the legislation be to create a corporation by adopting one chartered in another State, its status is the same as if it had been originally solely incorporated by the State adopting it."

It will be seen that the second statute, referred to in his opinion, expressly "*chartered the new consolidated company in Kentucky*," whereas we have already shown that the Tennessee statute of December 4th, 1851, does not charter the Louisville and Nashville Railroad Company at all. It simply gives it a right of way into this State.

The construction placed by Judge Hammond upon the *first* Kentucky statute—to-wit, the Act of March, 1872—is strong authority in our favor. He admits that if the legislation of Kentucky had closed with that statute it would have had no other effect than to authorize the Mississippi Central Railroad Company to do business in Kentucky; and yet that statute enacted "that the said Mississippi Central Railroad Company be,

and is hereby, declared a body politic and corporate." His Honor doubtless pursued the same line of thought in construing those words that this Court pursued in construing the Virginia statute in the *Railroad Company vs. Harris*, 12 Wall., 81. As the statute did not expressly declare the company to be a body politic and corporate *of the State of Kentucky*, however strong the inference might have been that such was the intention of the Legislature, in the absence of the concluding words of the section, yet, as those words indicated that the powers granted by the act were conferred simply for the purpose of extending the road and branches into Kentucky, his Honor regarded it as simply a recognition by Kentucky of a foreign corporation, without adopting it as a corporation of its own.

In the Tennessee statute of December 4th, 1851, there is no language declaring the Louisville and Nashville Railroad Company to be a body politic or corporate. It is simply referred to and recognized as the Louisville and Nashville Railroad Company, incorporated by the Legislature of Kentucky, without employing any language either to adopt it as a corporation of Tennessee or to create a new corporation of that name in Tennessee.

We submit, therefore, that this case, so far as it construes the second statute of Kentucky—viz., the act of March 11th, 1878—is not analogous to the case at bar; and, so far as it construes the first statute of Kentucky—viz., the act of March 18th, 1872—is an authority in our favor and an approval of the case of *Railroad Company vs. Harris*.

3. The case of the *Ohio and Mississippi Railroad Company vs. Wheeler*, 1 Black, 287, may also be cited against us. We have already shown that this case was restrained and qualified by this Court, in the case of *Railroad Company vs. Harris*, 12

Wall., 83, where it was held that the statutes of Ohio simply granted a license to an Indiana railroad company to extend its road into Ohio. But taking the case as it was originally decided in 1 Black, it will be seen that the company, in its own declaration, described itself as a corporation created by the laws of the States of Indiana and Ohio, and it was upon this concession that the Court was acting when it declared, on page 298, that the Ohio and Mississippi Railroad Company, in Indiana, was a distinct and separate corporate body from the corporate body of the same name in Ohio.

In the case at bar, we deny that the Louisville and Nashville Railroad Company was created by the laws of the States of Tennessee and Kentucky; on the contrary, we say that it was created, or chartered, by the State of Kentucky alone, and that the Tennessee statute of December 4th, 1851, simply gave it a right of way into that State.

The counsel for the company in the case of *Ohio and Mississippi Railroad Company vs. Wheeler*, conceded as against their company, the very fact which we deny in this case. The two cases therefore are not analogous, and that case is no authority against us in this.

4. The case of *Railway Company vs. Whitton*, 13 Wall, page 273, may also be cited against us. In that case the plaintiff, a citizen of Illinois, had sued the company in one of the State courts of Wisconsin. He afterwards filed a petition for the removal of the case to the Circuit Court of the United States for the Western District of Wisconsin. This petition was resisted by the company upon affidavits that it was "a corporation created and existing under the laws of the States of Illinois, Wisconsin, and Michigan." Under this concession, the Court declared, on page 283, that the company must be regarded, for the purposes of that action, as a citizen of Wisconsin, whatever its status or citizenship might be elsewhere.

The case of the *Ohio and Mississippi Railroad Company vs. Wheeler* is referred to by the Court as being precisely similar; allusion being made to the fact that the company's own declaration in that case admitted that it was a corporation created by the States of Indiana and Ohio.

As stated above, we deny in this case that the Louisville and Nashville Railroad Company was created by the States of Tennessee and Kentucky, and therefore the case of *Railroad Company vs. Whitton* is no authority against us.

The statutes of Illinois, Wisconsin, and Michigan, under which that corporation was created, are not given in the report of the case, and the Court seems to have acted entirely upon the concession contained in the affidavits filed by the company in opposition to the petition for removal. The Court, on page 284, refer to the case of the *Railroad Company vs. Harris*, 12 Wall., 65, and use this language: "The correctness of this view is also confirmed by the recent decision of this Court in the case of *Railroad Company vs. Harris*. In that case a Maryland railroad corporation was empowered, by the Legislature of Virginia, to construct its road through that State, and by an act of Congress, to extend a lateral road into the District of Columbia. By the act of Virginia, the company was granted the same rights and privileges in that State which it possessed in Maryland, and it was made subject to similar pains, penalties, and obligations. By the act of Congress, the company was authorized to exercise in the District of Columbia the same powers, rights and privileges in the extension and construction of the road, as in the construction and extension of any railroad in Maryland, and was granted the same rights, benefits, and immunities in the use of the road which were provided in its charter, except the right to construct from its road another lateral road; and this Court held that these acts did not create a new corporation, either in Virginia or the District of Columbia, but only enabled the Ma-

ryland corporation to exercise its faculties in that State and in the District. They did not alter the citizenship of the corporation in Maryland, but only enlarged the sphere of its operations, and made it subject to suit in Virginia and in the District."

The case of *Railway Company vs. Whitton* is, therefore, a valable authority in our favor, as being a full and direct approval of the case of *Railroad Company vs. Harris* in its construction of the acts of Congress and of the Virginia Legislature.

5. The case of *Muller vs. Dows*, 94 U. S., 446, may also be cited against us. That was a bill filed in the Circuit Court of the United States for the District of Iowa. The bill avered that two of the complainants were citizens of New York, and the other a citizen of Missouri. The two original defendants, the Chicago and Southwestern Railway Company, and the Chicago, Rock Island and Pacific Railroad Company, were averred to be citizens of the State of Iowa. The appellants were made parties after the suit had been some time in progress, and in their petition to be made parties, they adopted another petition, in which, it was alleged, "that the Chicago, Rock Island and Pacific Railroad Company was, and is, a corporation organized under and in pursuance of the laws of the States of Illinois and Iowa, and that the Chicago and Southwestern Railway Company was, and is, a corporation created under and by virtue of the laws of the States of Missouri and Iowa." (See page 446.)

The appellants had, therefore, expressly conceded that both of the railroad companies were created under the laws of the State of Iowa. Acting upon this concession, the Court (on page 447), following the case of *Ohio and Mississippi Railroad Company vs. Wheeler*, and *Railroad Company vs. Whitton*, where similar concessions had been made, held, that in the State of Iowa the corporations must be regarded as Iowa corporations,

whatever their status might be in Missouri or Illinois. We beg pardon for repeating that in this case we deny that the Louisville and Nashville Railroad Company was created or organized under or by virtue of the laws of Kentucky and Tennessee; on the contrary, we insist that it was organized and created under and by virtue of the laws of the State of Kentucky alone.

The case of *Muller vs. Dows* is, therefore, not analogous, and is no authority against us.

6. The case of *Memphis and Charleston Railroad Company vs. Alabama*, 107 U. S., page 581, will be relied on with great confidence by our opponents.

That case involved the question as to whether an act passed by the Legislature of Alabama on the 7th of January, 1850, created the Memphis and Charleston Railroad Company, a corporation in the State of Alabama, or merely gave to it a right of way through that State. See Appendix, page 75.

We admit that there is a certain degree of general resemblance between that statute and the Tennessee act of December 4th, 1851, involved in this case, but the resemblance is such as would only mislead a superficial observer.

As remarked by this Court in *Railroad Company vs. Schutte*, 103 U. S., 140, "every statute, like every contract, must be read by itself, and it no more follows that one statutory contract is like another than that one ordinary contract means what another does" * * * "It must be determined from the language used in each particular case, what has been done, or agreed to be done in that case."

The difference between the language used in the Alabama statute and that used in the Tennessee statute is found in the seventh section of the Alabama statute, quoted on page 583 of

the opinion of the Court. In that section the Alabama statute repeatedly speaks of the Memphis and Charleston Railroad Company as "the company *hereby incorporated;*" and, as stated by Mr. Justice Gray, it was the repeated use of those words that made it plain to his mind that the Alabama statute intended to incorporate the company in that State.

Those words were substantially equivalent to the words used in the Illinois statute, construed by this Court in *Railroad Company vs. Vance*, 96 U. S., pages 456–7, referred to above.

In the Illinois statute it was declared that the lessees "*shall be a railroad corporation in the State of Illinois.*"

And in the Alabama statute it is declared repeatedly in the seventh section that the Memphis and Charleston Railroad Company *is* "*hereby incorporated.*" To declare that the company "is hereby incorporated" is substantially the same as to declare that "it shall be a railroad corporation in the State of Alabama."

But in the Tennessee statute, passed December 4th, 1851, involved in this case, it is nowhere declared that the Louisville and Nashville Railroad Company "is hereby incorporated;" nor is it anywhere declared that it "shall be a railroad corporation in the State of Tennessee;" on the contrary, it is referred to as "the Louisville and Nashville Railroad Company, *incorporated by the Legislature of Kentucky*," and the right of way into Tennessee is granted to the company, with all the rights, etc., prescribed in the "charter granted to *said* company *by the Legislature of Kentucky*," etc.

7. The case of *Clark vs. Barnard*, 108 U. S., 449, may also be cited against us upon this point.

In that case it appeared that the Hartford, Providence and Fishkill Railroad Company was a consolidated company, de-

riving its existence and powers from the laws both of Connecticut and Rhode Island; but so far as it owned and operated a railroad within the State of Rhode Island, the Court declared that it was, without question, a corporation of that State.

The Boston, Hartford and Erie Railroad Company was originally created a corporation by the laws of Connecticut; but it assumed to purchase the franchises and railroad of the Rhode Island corporation just referred to; and by a subsequent act of the Legislature of Rhode Island the sale was ratified, and it was enacted that the "said Boston, Hartford and Erie Railroad Company, by that name, shall and may have, use, exercise, and enjoy all the rights, privileges, and powers heretofore granted and belonging to said Hartford, Providence and Fishkill Railroad Company, and be subject to all the duties and liabilities imposed upon the same by its charter and the general laws of this State."

This Court held that the Connecticut corporation became the legal successor in Rhode Island of the Rhode Island corporation, as owner of its property and exercising its franchises therein, and became, therefore, in respect to its railroad in Rhode Island, a corporation in and of that State. Page 449.

Manifestly there is not the slightest analogy between that case and the case now before the Court.

The Louisville and Nashville Railroad Company did not purchase the railroad, or franchises, of any Tennessee corporation; and therefore never became the legal successor of any Tennessee corporation.

The Tennessee statute passed December 4th, 1851, did not enact that the Louisville and Nashville Railroad Company should "have, use, exercise or enjoy, any of the rights, privileges or powers" theretofore granted or belonging to any Tennessee corporation, nor that it should be "subject to any of the duties

"or liabilities" theretofore imposed upon any corporation of Tennessee. On the contrary, the statute simply gave a right of way to the Louisville and Nashville Railroad Company, "*incorporated by the Legislature of Kentucky*," to construct its road in Tennessee, "with all the rights, powers, and privileges, and subject to all the restrictions, and liabilities prescribed in a charter granted to *said* company *by* the Legislature of Kentucky," etc.

In the case of *Clark vs. Barnard*, the Legislature of Rhode Island conferred upon a Connecticut corporation, all the rights and privileges of a certain corporation of Rhode Island; which, of course, included the right or privilege of the Rhode Island corporation to be a corporation in that State.

But, in this case, the State of Tennessee, instead of giving to a Kentucky corporation, all the rights and privileges of a Tennessee corporation, expressly confined the company, to such rights and privileges as were contained in its own charter, as *granted by the State of Kentucky*, and therefore left the company precisely as it found it, viz., a corporation of the State of Kentucky alone.

8. The case of *Stone vs. Farmers' Loan and Trust Co.*, 116 *U. S.*, 308-334, may also be cited against us.

The question as to the *citizenship* of the Mobile and Ohio Railroad Company was not involved in that case; the only question being as to its amenability to the Railroad Commission law of Mississippi. This Court said that a corporation *created* by each of several States is, *for all the purposes of local government*, a domestic corporation, and that its railroad within the State is a matter of domestic concern; but the Court had no occasion to decide that the Mobile and Ohio Railroad Company was *created* by the State of Mississippi, because that fact must have been conceded by the complainants in that case. At all

events, the fact that the company had been incorporated by the State of Mississippi was too clear for argument.

The company was first incorporated by an act of the State of Alabama; and the statute of Mississippi, after reciting the incorporation by Alabama, *set out the Alabama act in full*, "*the same as printed in Alabama*," and granted to the company "the same rights, powers, and privileges as are granted to it within the State of Alabama" by the Alabama act aforesaid, "and *the said act is hereby concurred in and adopted within the State of Mississippi.*"

In other words, the Alabama statute was re-enacted word for word in Mississippi.

But the Tennessee statute, passed December 4th, 1851, does not set forth or re-enact the Kentucky charter of the Louisville and Nashville Railroad Company. Neither does it "concur" in or "adopt" said charter. It simply gives the right of way to said company, "*incorporated by the Legislature of Kentucky*," to extend its road into Tennessee, under the "*charter granted to said company by the Legislature of Kentucky.*"

9. The case of *Graham vs. Boston, Hartford and Erie Railroad Company*, 118 U. S., pages 161, 166, 167, may be relied upon against us. That case is directly within the ruling of this Court in *Clark vs. Barnard*, 108 U. S., 436, referred to above; and the same corporation was involved in both cases.

The Legislature of New York passed an act authorizing the sale to the Boston, Hartford and Erie Railroad Company of the franchises and property of two other corporations (which were New York corporations), and provided that "such sale shall pass the title to such franchises and property, and that the purchasing company shall thereby become possessed of the *rights of charter* and property sold, and thereafter have, hold, and use the same in its own name and right." Page 167.

The purchasing company became the legal successor of the two New York corporations, whose "*rights of charter*" it acquired; it stood in their place, and of course became itself a New York corporation.

Our comments on the case of *Clark vs. Barnard*, which we have noticed above, apply equally to this case, and we will not lengthen this argument by repeating them.

III.

Our opponents may refer to the titles of three statutes passed by the Legislature of Tennessee, subsequent to the act of December 4th, 1851, as amounting to a construction by the Legislature of that State, to the effect that the act of December 4th, 1851, did constitute an incorporation of the Louisville and Nashville Railroad Company.

1. On January 10th, 1852 (see appendix, page 45), the Legislature passed an act entitled "An act to amend the charter of the Louisville and Nashville Railroad Company, passed the 4th of December, 1851."

2. On December 15th, 1855 (see appendix, page 45), the Legisture passed an act entitled, "An act to amend an act entitled an act to charter the Louisville and Nashville Railroad Company, and the several acts amending said act passed by the Legislatures of Kentucky and Tennessee."

3. On Merch 20th, 1858 (see appendix, page 53), the Legislature passed an act entitled, "An act to amend the charter, and and several acts amendatory thereto, passed by the Legislatures of Tennessee and Kentucky, incorporating a company to construct a railroad from the city of Louisville to the city of Nashville."

It will not be pretended by our opponents that there is anything in the body of either of those three statutes which would amount to an incorporation of the Louisville and Nashville Railroad Company in Tennessee.

The only two legitimate arguments which our opponents can possibly draw from those statutes are:

1. That from their *tittes* we may infer that the Legislature of Tennessee construed the Act of December 4th, 1851, as amounting to an incorporation of the Louisville and Nashville Railroad Company in Tennessee, and

2. That as those statutes attempt to increase or restrict the powers of the company in Tennessee, we are to infer that the Legislature regarded it as a corporation subject to the jurisdiction of the Legislature of that State, and therefore a Tennessee corporation.

It may also be urged in this connection, that as the company accepted the benefits, and submitted to the restrictions imposed by those statutes, it has conceded the correctness of the construction assumed by the Legislature.

To so much of the argument as relies upon the legislative construction contained in the mere *tittes* of those statutes, we can but refer the Court again to the language of this Court in the case of *Hadden vs. The Collector*, 5 Wall., 110, in which the Court say: "That the title of an act has but little weight, even when the body of the act is doubtful." But if the Legislature of Tennessee had in the body of each and all of those statutes expressly declared in so many words that the act of December 4, 1851, should be construed as amounting to an incorporation of the Louisville and Nashville Railroad Company, this Court would be bound to disregard such legislative construction, however mandatory in terms it might have been. It is for this Court, and not for the Legislature of Tennessee, to say what

was the legal effect of the act December 4, 1851. If, upon an examination of the provisions of the body of that act, this Court shall come to the conclusion that it amounted to an incorporation of the Lousville and Nashville Railroad Company, then, of course, the Court will so decide. But if it shall conclude that the act of December 4, 1851, amounted to nothing more than the grant of a license, or right of way, then it will so decide, whatever may appear to have been the opinion of the members of the Legislature of the State of Tennessee.

In the case of the *Governor vs. Porter*, 5 Humph., 167, it appeared that the Legislature, at its session of 1835, had passed a law in reference to the collection of revenue. At its session of 1839–40, without repealing that law or enacting a different one, which was of course perfectly competent for it to have done, it undertook to say what was its meaning, and to decide upon its construction.

In commenting on the act of 1839–40, the Supreme Court of Tennessee use this language: "To the Legislature belongs the power of enacting such laws within the limits of the Constitution as the policy of society and its varying interests may seem to require, but after their enactment, it is then the province of the Judiciary to ascertain their meaning, and determine upon their construction. Any other doctrine would destroy the checks contained in the Constitution against the abuse of power, and tend to a concentration of all power in a single department of the Government."

To so much of the argument as refers to the acceptance by the company of the provisions of those statutes, as amounting to a concession upon the part of the company, of the right of the Legislature of Tennessee to increase or diminish the powers of the company, or otherwise legislate in regard to it, we say that we have never denied this power upon the part of the State

of Tennessee, although the Louisville and Nashville Railroad Company is and has been a foreign corporation. The company, though chartered by the State of Kentucky, could not have extended its road into the State of Tennessee without the permission of that State. Its Kentucky charter could have no operation in the State of Tennessee, except in so far as the State of Tennessee permitted it to operate.

The very object of the Act of December 4th, 1851, was to permit the company to extend its road into Tennessee with the rights, powers, and privileges prescribed in its Kentucky charter, subject to such exceptions and restrictions as were contained in the Act of December 4th, 1851, and of course the company, in accepting that act, was bound by the restrictions and qualifications imposed by it. To illustrate:

Section 2 of the Act of December 4th, 1851, required the company, in the construction of its road, to commence at each end of the line at the same time, and continue the work from each end until the railroad was completed.

In the seventh section there was a proviso that the State of Kentucky should grant to the State of Tennessee, or to such companies as the State of Tennessee might charter, the right of way for a railroad from Nashville to intersect with the Lexington and Danville Railroad.

The eighth section required the company to bring its railway to the city of Nashville, or South Nashville, and to erect its depot convenient to the Nashville and Chattanooga Railroad, so as to form a connection with that road.

These provisions were not contained in the Kentucky charter, but they were imposed by the State of Tennessee upon the company in the Act of December 4th, 1851, as conditions in the grant of the right of way which that State gave to the com-

pany; and in accepting the statute of course the company had to take it subject to those conditions.

In Story's Conflict of Laws it is said that "A State may prohibit the operation of all foreign laws, and the rights growing out of them within its own territory; it may prohibit some foreign laws, and admit the operation of others; it may recognize and modify, and qualify some foreign laws; it may enlarge or give universal effect to others; it may interdict the administration of some foreign laws; it may favor the introduction of others. When its Code speaks positively on the subject, it must be obeyed by all persons who are within reach of its sovereignty. See Story's Conflict of Laws, Sec. 23.

The State of Tennessee, therefore, had the same right to place the restrictions referred to upon the Louisville and Nashville Railroad Company, though a corporation of Kentucky, as it would have had if it had been a corporation of Tennessee, and, therefore, the fact that those restrictions were placed upon the company furnishes no evidence whatever that it was a Tennessee corporation.

If the Legislature had the power to place those restrictions upon the company, it, of course, had the power to remove them, or to give to the company such additional powers and privileges as the Legislature saw proper to confer; and by reference to the acts of January 10th, 1852, December 15th, 1855, March 20th, 1858, relied upon by our opponents, and cited above, the Court will see that their sole purpose was to relieve the company from the restrictions imposed by the act of December 4th, 1851, and to confer upon it certain rights and powers, which were not contained in its Kentucky charter, but which were thought necessary to the successful prosecution of its business.

Before leaving the construction of the act of December 4th, 1851, we beg leave to call attention to the language of the Su-

preme Court of Tennessee, in the case of *Louisville and Nashville Railroad Company vs. County Court*, 1 Sneed, 659. In speaking of that company the Court used this language: "The petitioner, or relator, is a corporate body, made so by an act of the Legislature of Kentucky; and by an act of the General Assembly of Tennessee of 1851, *a right of way is granted to it through this State*, so as to connect the cities of Louisville and Nashville with sundry limitations and conditions, all of which have been accepted."

We concede that the question of the citizenship of the company was not involved in that case, and therefore do not cite it as an authority, but merely as showing how the Supreme Court of the State regarded the status of the company.

The question, however, was involved in the cases of *Montgomery County vs. L. & N. R. R. Co.*, and *City of Clarksville vs. L. & N. R. R. Co.*, in the Circuit Court of Montgomery County, Tenn., and upon elaborate argument Judge Stark decided that the Louisville and Nashville Railroad Company was a citizen of Kentucky, and not of Tennessee.

In the case of *L. & N. R. R. Co. vs. Henry County*, in the Circuit Court at Memphis, Judge John Baxter, upon full arugment, decided the question in the same way.

And in this case, in the Court below, Judge Key, upon full argument, sustained the company's right of removal to the Federal Court. 11th Fed. Rep., 536, 537, *Callahan vs. Louisville and Nashville Railroad Company.*

IV.

It may be argued that the Louisville and Nashville Railroad Company is operating the road of the Nashville and Decatur Railroad Company under a lease; that the Nashville and Deca-

tur Railroad Company is a Tennessee corporation; and that as the lessee must operate the leased road under all the liabilities imposed by its charter, the lessee necessarily takes the place of the corporation whose road it leases, and therefore becomes a Tennessee corporation itself.

The Tennessee statute under which the lease was made is as follows: "The several railroad companies may lease any other railroad connected therewith, and upon such terms and conditions as may be agreed upon between the president and directors of the contracting companies. All railroad companies availing themselves of the preceding section shall be liable to all liens in favor of the State and to all liabilities imposed by their charters or the general law of the land, in the same manner as the company making the lease would have been had no lease been made." T. & S. Code of Tenn., Secs. 1424, 1425.)

In the case of *Treadway and Wife vs. Chicago and Northwestern Railway Company*, 21 Iowa, pp. 351, 357, 362, it appeared that the defendant was a corporation organized under the laws of the State of Illinois, but was operating in Iowa a railroad which belonged to a corporation of that State. It applied for a removal of the case from the District Court of the State to the Circuit Court of the United States. The Court held:

1. "That for all jurisdictional purposes, as respected the Federal Courts, the defendant should be regarded as a citizen of Illinois."

2. That as it did business in Iowa, under the sanction of its laws, it was liable to be sued there; but that it had not by any legislation of that State, "even if such legislation were competent," been deprived of the right to be regarded as a citizen of Illinois so far as concerned its right to elect to be proceeded against in the Courts of the United States.

3. There was an Iowa statute providing that a party leasing the railroad of another company, should in all respects be liable to the public for acts of negligence, in the same manner as though the road belonged to the lessee.

The Court held that this statute simply meant that the lessee was liable in the same manner, or to the same extent as though it owned the road, but that it was not the intention of the statute to make any change as to the forum, or jurisdiction, in which the liability should be asserted or enforced.

4. "There was another statute of Iowa specifying the county in which suits might be brought, but the Court held that this statute, even if applicable to foreign corporations, did not undertake to deny the right of removal to Federal Courts in cases where such removal was authorized by the Constitution and laws of the United States."

In the case of the *Baltimore and Ohio Railroad Company vs. Cary*, 28 Ohio St., 208, 218, it was held: "That a foreign railroad corporation, by merely leasing, possessing, and operating in the State of Ohio the property of an Ohio corporation, did not thereby become a corporation of Ohio, nor as such a citizen of that State. There were statutes of Ohio to the effect that the leasing, purchasing, or operating a railroad in the State by a railroad company of another State, should be regarded as a waiver of the right of such foreign corporation to remove cases brought against it in the State Courts to those of the United States." But the Court held: "That those statutes were repugnant to the Constitution and laws of the United States, and therefore were ineffective as a statutory waiver of the right of removal."

We are aware that a contrary ruling was made by the Court of Appeals of Virginia in the case of the *Baltimore and Ohio Railroad Company vs. Wightman's Administrator*, 29 Grat., 431,

but upon writ of error, this Court reversed the Court of Appeals in Virginia, and affirmed the doctrine as laid down by the Supreme Courts of Iowa and Ohio. See *Railroad Co. vs. Koontz*, 104 U. S., page 5. See also *Fisk vs. Chicago, Rock Island and Peoria Railroad Company*, 53 Barb., 472; *Western Union Telegraph Company vs. Dickinson*, 40 Ind., 444; *Christian Union vs. Yount*, 101 U. S., 352; *Cowell vs. Springs Company*, 100 U. S., 59; *Wilkinson vs. Delaware Railroad*, 22 Fed. Rep., 353.

Respectfully submitted,

ED. BAXTER,

Of Counsel for Defendant in Error.

122-391

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1886.

No. 184.

C. H. GOODLETT,
Administrator of Simon Callahan, Deceased,
Plaintiff in Error,
vs.
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ADDITIONAL ARGUMENT.

It will be more convenient to consider the third, fourth, fifth, and sixth assignments of error together.

I.

The errors assigned all occurred, if at all, in the charge of the Judge; and no *specific* exceptions were taken to the charge by the plaintiff in the court below, upon any of the grounds now assigned as error.

The transcript, pp. 28, 29, purports to set out the *entire* charge; and at the foot of it, a *general* exception is taken in these words: "To which charge the plaintiff, by attorneys, then and there excepted." Transcript, p. 29. "This *general* exception to the charge did not direct the attention of the Court to the particular portions of it to which the plaintiff objected. *It therefore raises no question for review by this Court.*"

114 U. S., 476, *Burton vs. West Jersey Ferry Company.*
98 U. S., 479, *Railroad Company vs. Varnell.*
108 U. S., 574, *Rule 4 of Supreme Court.*
112 U. S., 250, *Connecticut Insurance Co. vs. Union Trust Co.*

As the errors now assigned were not specifically pointed out in the court below, I insist *that they cannot be considered by this Court.*

II.

The Judge in his charge said: "Under the facts proven in this case, were you to give a verdict against the defendant I

should feel bound to set it aside and grant a new trial. In such a state of the case, it is my duty to instruct you to find a verdict for the defendant, and I accordingly do so," etc. Transcript, pp. 28, 29.

The plaintiff has attempted to assign this action of the Judge as error, when the bill of exceptions, taken by the plaintiff, does not state that it contains *all* the evidence in the case.

I am aware that the *general* rule, of this Court, is that a bill of exceptions should *not* contain *all* of the testimony, but only so much of it *as is necessary to show the bearing of the rulings of the Judge.*

7 Wall., 136: *Lincoln vs. Claflin.*

The reason for this *general* rule is, that ordinarily the sufficiency of the testimony is left to the jury, and if the verdict is against the weight of the testimony, the error of the jury is usually corrected by a motion for a new trial.

But when the Judge peremptorily instructs the jury how to find, and the jury obeys his instruction, no error can be predicated of the action of the *jury*, for the error, if any, is in the action of the Judge. A motion for a new trial in such a case would be useless, and the only remedy of the party against whom the verdict is rendered, is to assign and *show* error in the action of the *Judge.*

The legal presumption is that the Judge acted correctly upon the testimony before him; and whoever asserts the contrary, must prove it by showing what the testimony was.

He cannot select so much of the testimony as may suit his purpose; but he must set forth, in his bill of exceptions, *all* of the testimony; because the Judge was acting upon *all* of the testimony when he instructed the jury what verdict to render.

In *Merchants' Bank vs. State Bank*, 10 Wall., 637, the Judge instructed the jury to find for the defendant, and the plaintiff excepted, and brought that instruction to this Court for review. Mr. Justice Swayne said: "This renders it necessary to examine *the entire case* as presented in the record."

In *Herbert vs. Butler*, 97 U. S., 320, the Judge directed the jury to find a verdict for the defendant. To this direction the plaintiff excepted, and it was the only error assigned in this Court. Mr. Justice Bradley said: "*The evidence is all set out* in the bill, and the question is whether the Judge erred in not submitting it to the jury."

In *Anderson County vs. Beal*, 113 U. S., 241, Mr. Justice Blatchford said: "Where the question, after all the evidence is in, is one entirely of law, a verdict may, at the trial, be directed for the plaintiff; and where the bill of exceptions, as here, *sets forth all the evidence in the case*, this Court, if concurring with the Court below in its views on the questions of law presented by the bill of exceptions and the record, will affirm the judgment."

In *Baylis vs. Travelers' Ins. Co.*, 113 U. S., 320, Mr. Justice Mathews said that if the Court below had directed a verdict for the defendant, "the plaintiff having duly excepted to the ruling in a bill of exceptions *setting out all the evidence*, upon a writ of error, would have been entitled to the judgment of this Court, whether, as a matter of law, the ruling against him was erroneous."

This Court never reviews the action of a United States Circuit Judge, in refusing to grant a new trial, where it is applied for on the ground, that the verdict is contrary to the testimony. This Court, therefore, never looks to the testimony *where it has been submitted to a jury*, under proper instructions from the Judge; and for this reason, it is not only unnecessary, but im-

proper, to set forth all the testimony in a bill of exceptions, *where the Judge has submitted the testimony to the jury*, as is generally the case in practice.

But in Tennessee, and perhaps in other States, the Supreme Court does review the action of the Judge of the lower court, in refusing to grant a new trial, where the verdict is against the evidence: and in those States it is always required that the party who insists that the Judge erred in refusing a new trial in such a case, shall prove the error of the Judge, by setting forth *all* the evidence, in the bill of exceptions, so that the Supreme Court may see whether it sustains the action of the Judge or not. In those States, if the bill of exceptions does not purport to contain *all* the testimony, no insufficiency of proof, however great, will authorize a reversal.

1 Heisk., 220, *Heatherly vs. Bridges.*

3 Baxter, 170, *Holbert vs. Seawright.*

Although a Circuit Judge of a Tennessee Court, may be perfectly satisfied in his own mind, that the testimony is wholly insufficient to authorize a verdict for the plaintiff, and that he will be compelled to grant the defendant a new trial, he is nevertheless compelled to submit the testimony to the jury and then set the verdict aside. But in the Federal Court the Circuit Judge may save all expense and delay, by withdrawing the insufficient testimony from the jury, and directing it what verdict to find.

The same result is reached in both courts. In both of them the defendant is eventually protected from the effects of an unwarranted verdict. In the Federal Court a proper verdict is obtained at once, while in the State Court, an improper verdict is obtained, but is then set aside. The question decided by the Federal Judge is precisely similar to the one decided by the State Judge, viz., is the testimony, *i. e., the whole of it*, sufficient to authorize a verdict for the plaintiff.

The only difference between the cases is, that the Federal Judge decides that question before verdict, while the State Judge decides it after verdict.

In reviewing the action of the State Judge, the Supreme Court of Tennessee requires that the bill of exceptions shall contain *all* the evidence, so that the Supreme Court may see whether or not the Judge below erred in passing upon its sufficiency; and if the complaining party fails to bring up *all* the evidence, the Supreme Court of that State conclusively presumes that the action of the Judge was correct.

I see no reason why a Federal Judge is not entitled to the benefit of a similar presumption in this Court; and the cases decided by this Court, to which I have referred above, I think establish that *in this class of exceptional cases*, the practice is, in effect, the same as in the Supreme Court of Tennessee, and that this Court will not reverse a Circuit Judge who has decided that the testimony is not sufficient, unless *all* of the testimony is brought to this Court, so that it may see whether or not, upon the *whole* case, the Judge has erred.

III.

I insist, however, that upon the testimony that is contained in the bill of exceptions, His Honor did right in directing the jury to return a verdict for the defendant.

"Formerly it was held that if there was what is called a *scintilla* of evidence in support of a case, the Judge was bound to leave it to the jury; but recent decisions of high authority have established a more reasonable rule, that in every case, before the evidence is left to the jury, there is a preliminary question for the Judge, *not whether there is literally no evidence*, but whether there is any upon which a jury can *properly* proceed to find a

verdict for the party producing it, upon whom the *onus* of proof is imposed."

14 Wall., 448, *Improvement Company vs. Munson.*

"*Although there may be some evidence in favor of a party*, yet if it is insufficient to sustain a verdict, so that one based thereon would be set aside, the Court is not bound to submit the case to the jury, but may and ought to direct the jury what verdict to render."

97 U. S., 319, 320, *Herbert vs. Butler.*
113 U. S., 241, *Anderson County vs. Beal.*
107 U. S., 162, 163, *Montclair vs. Dana.*
104 U. S., 553, *Griggs vs. Houston.*
95 U. S., 443, *R. R. Co. vs. Jones.*
14 Wall., 448, *Improvement Co. vs. Munson.*

"Such is the constant practice, and it is a wise one. It saves time and costs; it gives the certainty of applied science to the results of judicial investigation; it draws clearly the line which separates the provinces of the Judge and the jury, and fixes where it belongs the reponsibility which should be assumed by the Court."

10 Wall., 637, *Bank vs. Bank.*
22 Wall., 121, 122, *Pleasants vs. Fants.*
101 U. S., 18, *Bowditch vs. Boston.*
See also:
117 U. S., 415, *Marshall vs. Hubbard.*
113 U. S., 320, *Baylis vs. Travelers' Insurance Company.*
109 U. S., 478, 483, *Randall vs. B. & O. R. R.*
116 U. S., 682, 683, *Higgins vs. McCrea.*

The testimony contained in the bill of exceptions shows that the plaintiff was a section boss in the defendant's employ, and that it was his duty to keep defendant's track in repair, so that defendant's trains could, at all times, pass over it in safety.

To enable him to do his work properly, he was furnished by the defendant with a gang of section men, a push-car, and the usual tools and implements. His section extended from a point two and three fourths miles south of Franklin to a point five and a half miles north of Franklin. Franklin is a town eighteen miles south of Nashville, and is a telegraph station on defendant's road.

On the 4th day of December, 1880, about 6 o'clock, A. M., he was informed by one of his men that some rails were out of fix at the north end of the section, and he ordered the man to go to the defective rails and fix them, if he could, before passenger train No. 3 reached there. This train was a regular through passenger train, which was due to leave Nashville at 9:08 A. M. (Transcript, p. 15), and to arrive at Franklin at 9:47 A. M. (Transcript, p. 16), making a schedule time of about twenty-eight miles an hour, exclusive of stoppages, which would make the running time not less than thirty miles an hour.

It requires about thirty minutes for a push-car to go from Franklin to the defective rails, (Transcript, p. 17), but instead of going there when first informed of their condition, at 6 o'clock in the morning, he worked in the yard at Franklin until about 9 A. M. He then went to Butterfield, the telegraph operator, and asked where No. 3 was, and Butterfield told him he did not know. (Transcript, p. 21.) He went away but came back again at 9:05 A. M. (Transcript, p. 20–22), and asked Sanderson, the station agent, where No. 3 was. Sanderson told him that it was reported on time at Nashville; and Butterfield told him to wait a few minutes, and he would see if it had left South Nashville, a telegraph station about one mile south of Nashville proper. The wires were busy so that Butterfield could not get South Nashville at the instant, and plaintiff, after waiting two or three minutes, went away. Butterfield did telegraph as soon as he could, and in some four or five minutes, he got a dispatch that

No. 3 had left South Nashville on time, and went to the window to so notify the plaintiff, but he was gone, having started with his push-car and men to the place where the rails were defective. (Transcript, pp. 20, 21, and 22.)

The push-car was about eight feet long, six or seven feet wide, and two feet high. The plaintiff stood upon the car and his men pushed it along. They stopped at McEwen's crossing and listened, but heard no trains. (Trans., p. 18). They also stopped at Winston's Spring to listen (Trans., p. 24), and again at the south end of the cut in which the accident happened. (Transcript, pp. 17 and 23.)

Having failed to hear the approach of No. 3, the car was pushed forward into the cut, which was upon a curve in the road and about two hundred yards long. (Transcript, p. 24.) The northwest or inside bank of the cut was about ten or twelve feet high, and the other bank was about seven feet high. (Transcript, p. 25.) No flagman was sent ahead of the car into the cut. When the push-car reached the deepest part of the cut the plaintiff saw the smoke of the engine of No. 3, and called out, "Here she comes!" He and his men then lifted the push-car off the track, stood it up on the side or end in the ditch of the cut, and tried to lean it up against the bank of the cut, but failed to do it. (Transcript, p. 24.)

The engine, tender, and baggage-car of No. 3 passed by the push-car without touching it, when Cook, one of the section men, becoming frightened, ran off up the bank of the cut, and let the push-car go. The plaintiff then ordered the other men to get out of the way; and as soon as they let go, the push-car fell against the rear part of the train, and was thrown back by the force of the train, striking the plaintiff in the rebound, and occasioning the injury for which this suit is brought. (Transcript, pp. 23, 24.) The train stopped in about its own length after the plaintiff was struck. (Transcript, p. 26.)

the witness should have elevated himself to the same height as the engineer was, and then have taken his observation from that point of view.

The same witness says that he also stood at a point one hundred and eighty yards north of where the accident occurred, and from that point could see the iron rails of the track where plaintiff was hurt. This is a substantial corroboration of the engineer, who says that he estimated it was about one hundred yards from where he first saw the push-car to where the accident occurred. He never measured the distance, and, considering that his estimate of it was made upon a rapidly moving engine, and in a moment of excitement, it is surprising that he should have been so nearly correct.

The plaintiff and his principal witness, Baugh, express the opinion that the train could, and therefore ought to have been stopped in its own length, but their opinions were not based upon actual experiments. They were doubtless drawn from their casual observations of other trains at other places, and can weigh nothing against the positive testimony of the engineer, that his engine and train were in perfect order, and that every known means was instantly applied to stop the train.

Carefully conducted experiments have demonstrated, that the distance within which a train can be stopped, varies with the weight and length of the train, the grade and curvature of the road, the wet or dry condition of the rail, the speed at which the train is running, etc., and a mere opinion formed from observing other trains at other times and places is of no practical value whatever. Such opinions may mislead an ignorant jury, and they are doubtless introduced in some cases for that purpose; but as real probative facts they are entitled to no consideration whatever.

McEwen, a disinterested by-stander, who happened to witness the accident, says that from the point at which the whistle blew to the place of the collision is 384 feet, say 128 yards, and that he does not think the engineer could have seen the push-car before about the place where he whistled. (Trans., p. 25.)

I say that these witnesses substantially corroborate the engineer, who estimated that he was about 100 yards from the push-car when he first saw it.

The only attempt to contradict the engineer on this point, was by some measurements made under the direction of plaintiff's attorney. A man is said to have been placed on the track where the accident occurred, with a hat on a stick, and the hat held two feet above his head, so as to make it about the height of Callahan's hat when he was standing upon the push-car; and a witness states he could see *the hat* from a point three hundred and seventy-five yards north of it. (Transcript, p. 20.) This was surely a most unfair experiment. The witness does not pretend that he could see any thing except the hat. He does not claim that he could see any part of the man who held the hat. An engineer upon a train running thirty miles an hour could not be expected to notice so small an object as a hat, when the man wearing it was completely concealed from his view, in a cut, and around a curve.

The witness does give it as *his opinion*, that the engineer could have seen Callahan on the push-car, three hundred and seventy-five yards before he was struck; and a map or plan is filed, with such a statement placed upon it. But evidently it was a mere argument of the witness, to the effect that the engineer, from his seat in the cab of the engine, could have seen Callahan standing on the push-car, though the witness, as before stated, does not pretend that he (the witness) could see any thing except the hat. To have made the experiment worth any thing,

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Section 1168 provides that "no railroad company that observes, or causes to be observed, these precautions, shall be responsible for any damages done to person or property on its road."

The defendant in this case had both the engineer and fireman on the engine, on the lookout ahead, and as soon as plaintiff appeared upon the road, the alarm whistle was sounded, the air-brakes were applied, the engine was reversed, the track was sanded, and steam was given to turn the drivers backward. No other possible means of preventing the accident are as yet known to locomotive engineers.

IV.

I have assumed in the last preceding section of this argument that the plaintiff was one of the persons for whose protection the provision of the Code of Tennessee therein quoted was intended; but such is not, in fact, the case.

An analogous case is presented in one of the most recent opinions of the Supreme Court of Tennessee (*R. R. Co. vs. Bush*, 15 Lea, 147–149), in which the former decisions of that Court are collected and commented upon by the distinguished Mr. Justice Cooper. The plaintiff in that case was a brakeman on a freight train, which had taken a side-track at a depot, in order to allow a passenger train to meet and pass. It was night, and plaintiff was ordered by the conductor of the freight train to go forward upon the main track, display danger signals, fix torpedoes on the rails, and stand upon the track to wave a red light, as a warning to the passenger train to stop. Instead of discharging these duties, he neglected them, and went to sleep on the end of a cross-tie, so close to the rail as to be struck by the passenger train. He sued the company for damages, claiming the benefit of Section 1166 of the Code, and insisting that

its precautions had not been complied with by the engineer of the passenger train; and the only question in the case was whether said section of the Code applied to him or not. The Court held that said section "was intended for the benefit of the general public, not for the servants of the company, *and clearly not for a servant whose negligence caused*, OR CONTRIBUTED TO CAUSE, *the accident.*"

15 Lea, 150, 151, *R. R. Co. vs. Bush.*

In the case now before the Court, it was the duty of plaintiff to see that defendant's track was safe for the passage of trains; and yet he himself obstructed it by running a push-car into a deep cut upon a curve, in the face of a regular passenger train, freighted with human beings, when he knew that the train was due, or nearly due, at that point, and without taking the obvious precaution of sending some one ahead of his car to flag the approaching train. The cut was only about 200 yards long, and it would not have taken more than five minutes to have flagged the car through this cut, to where the approaching train could have been seen. If, instead of riding upon the car, he had walked ahead of it through the cut with a red flag, the accident would not have happened.

His only excuse for this gross negligence was that the defendant kept a clock in the agent's office in Franklin, where defendant's employes were in the habit of comparing their watches; that he set his watch by that clock *the day before the accident*, and set it five minutes ahead of the clock; that when he started for the scene of the accident his watch was at 8:45 A. M., and the clock at 8:40 A. M.; and that train No. 3 was not due at Franklin until 9:47 A. M. (Transcript, pp. 15, 16.) He admits that it required about thirty minutes for his push-car to run from Franklin to Mallory's, a station about one mile north of where the accident occurred, about three miles north of Franklin, and about fifteen miles south of Nashville. (Transcript, pp.

16, 17.) He says that according to his watch he had sixty-two minutes, and according to the clock sixty-seven minutes, before No. 3 was due at Franklin, in which to push his car from Franklin to Mallory's, where he could run it upon the side track, out of the way of that train.

He knew that it would require thirty minutes for him to get to Mallory's; so he knew that he could not get there more than thirty-two or thirty-seven minutes ahead of the time that the train was due at Franklin; and as, according to its schedule, it would require about seven minutes for the train to run from Mallory's to Franklin, he was bound to know that he could not possibly reach Mallory's, more than twenty-five or thirty-one minutes ahead of the time that train No. 3 would be due at that station.

He says that he did not know that the clock was out of order when he set his watch by it; and assuming for the present that what he says is true, I still insist that it was gross negligence for him to run his car without a flagman in the face of the passenger train, when he knew that he would not have more than twenty-five or thirty-one minutes to clear the time of that train at Mallory's, where he expected to meet it.

He says that the accident occurred at 9:25 A. M. by his watch, and as No. 3 was on time, and was not due at Franklin—two miles south of that point—until 9:47 A. M., his watch must have been twenty-five minutes behind the correct time, and the clock at Franklin must have been thirty minutes slow. (Trans., p. 16.) The proof shows that the clock was not keeping exact time, but no witness pretends that it ever lost more than ten minutes in twenty-four hours, and the most reliable witness says that it never lost more than ten minutes in thirty-six hours. (Trans., p. 22.) *On the day of the accident it had lost only four minutes in twenty-four hours.* (Trans., p. 21.) This variation of five or ten minutes in twenty-four hours made no

practical difference, as the clock was corrected every day by telegraph from the Nashville office. (Trans., p. 22.) When the time was taken at 10 o'clock the morning of the accident, and within a few minutes after it occurred, the clock was, as just stated, only four minutes behind the correct time, whereas I have shown above that the plaintiff's watch was, according to his own testimony, at least twenty-five minutes slow. This shows conclusively that either the plaintiff made a mistake in setting his watch the day before the accident, or that his watch lost twenty-one minutes more than the clock, in the twenty-four hours preceding the accident; and either theory is sufficient to show the recklessness of running his push-car without a flagman in the face of the passenger train, with not more than twenty-five or thirty-one minutes clearance time at Mallory's, where they were expected to meet.

The plaintiff claims that he did not know that the clock was out of order, but it is positively proven by Sanderson, Butterfield, and Young that on the morning of the accident he was about to set his watch by the clock, and Sanderson told him not to do so, as the clock was not in order. (Trans., pp. 21, 22.) If these three witnesses can be believed, and Butterfield was not in the defendant's service when he was examined, the plaintiff's negligence was absolutely criminal in setting his watch in spite of the warning, and then running his push-car out upon the main track, without a flagman, and upon the regular time of No. 3.

The fact that plaintiff stopped his car three or four times that morning on the way, to listen for trains, shows that he feared that he would meet some train; and none was due there, at that time, except the one he met. (Transcript, p. 23.)

With knowledge that he had set his watch by the clock, after he had been warned not to do it, and with knowledge that No. 3 was nearly due, and to listen for which he had frequently

stopped on the way, he ordered his car into the cut without attempting to send any one, or to go himself, ahead of it, to flag it through the cut.

Surely His Honor was justified in saying to the jury that plaintiff was guilty of negligence; and if such was the case, then, under the decision of the Supreme Court of Tennessee, in *Railroad Company vs. Bush*, above referred to, Section 1166 of the Code did not apply to him, and His Honor was justified in further instructing the jury that plaintiff had no right to recover.

V.

The Supreme Court of Tennessee, in the case just cited, held that a brakeman of a freight train, sent forward to signal an expected passenger train, was a fellow-servant of the engineer of the passenger train, though they were of different grades and employed upon different trains. That Court holds that "several servants, although of different grades, are nevertheless fellow-servants when employed in a common service." 15 Lea, p. 151. And the common service in that case, consisted in the fact that the engineer of the passenger train, and the brakeman of the freight train, who had been sent out to swing a danger signal to guide the action of the engineer, in coming into a depot, were engaged—at least for the time—in the common service of getting the passenger train safely by a place of danger; and being such fellow-servants, the brakeman could not recover against the company for the negligence of the engineer.

15 Lea, 151, *Railroad vs. Bush.*

The decision of this Court, in *Randall vs. B. & O. R. R.*, 109 U. S., 484, is substantially to the same effect.

Mr. Justice Gray, in deciding that the persons involved in that case were fellow-servants, says: "They are employed and paid by the same master; the duties of the two bring them to work at the same place at the same time, so that the negligence of the one in doing his work, may injure the other in doing his work; *their separate services have an immediate, common object—the moving of the trains*; neither works under the order or control of the other."

109 U. S., 484.

In this case neither the plaintiff nor the engineer of the passenger train worked under the order or control of the other. They were both employed and paid by the same master. The duties of the two brought them to work at the same place at the same time, so that the negligence of the one might injure the other; because it was the plaintiff's daily duty to keep his section of the road unobstructed and in safe repair, and it was the engineer's daily duty to run his train over that section; and their separate services had an immediate, common object—viz., the movement of that train over that section in safety.

VI.

The plaintiff's counsel contend that though the plaintiff may have been guilty of "gross negligence and folly," yet it will not bar his right of action, and can be considered only in mitigation of damages.

I concede that such would be the rule if Section 1166 of the Code applied, but I have shown by the above cited case of *R. R. Co. vs. Bush*, 15 Lea, 148, that said section does not apply, and the case is therefore governed by the common law, under which the contributory negligence of the plaintiff, materially contributing to his injury, bars his right of recovery.

VII.

It is not necessary for me to notice the various instructions asked for by plaintiff, which were based upon the theory that Section 1166 of the Code applied to the case, for whether such instructions were or were not correct expositions of the meaning of that section, they were wholly irrelevant if that section does not apply; and no reversal will be granted for their refusal. For the same reason it is useless for me to comment on the cases cited in counsel's brief, as they all relate to the construction of that section.

See 116 U. S., 529, *Iron and Mining Co. vs. Chusman.*
118 U. S., 241, *Evans vs. Pike.*
115 U. S., 227, *Lancaster vs. Collins.*
16 Wall., 577, *Walbrun vs. Babbitt.*

Respectfully submitted,

ED. BAXTER,
Of Counsel for Defendant.

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MAR 21 1887

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1886.

No. 184

C. H. GOODLETT,
Administrator of Simon Callahan, Plaintiff in Error,

vs.

LOUISVILLE & NASHVILLE R. R. CO.,
Defendant in Error.

In error to the Circuit Court of the United States for the Middle District of Tennessee.

Appendix to Brief of ED. BAXTER, of Counsel for Defendant in Error.

COMPILATION OF STATUTES.

MARSHALL & BRUCE, NASHVILLE

CHAPTER CXVIII.

AN ACT to charter the Station Camp Creek Turnpike Company in the county of Sumner, and for other purposes.

SEC. 17. *Be it further enacted by the General Assembly of the State of Tennessee*, That Neill S. Brown, Aaron V. Brown, George W. Martin, Matthew Watson, Samuel Seay, Eugene Underwood, of Davidson County; John Burton, W. W. Pepper, Dudley E Brooks, A. B. Green, and L. G. Stranton, of Robertson County, with such other persons or corporations as shall associate with them, are hereby constituted a body politic and corporate, by the name of the Louisville and Nashville Railroad Company, to be connected with and form part of a corporate body created, or to be hereafter created, by the Legislature of the State of Kentucky, and by that name to sue and be sued, to contract and be contracted with, and the said company are hereby authorized to construct and finally to complete a single or double railway from some central or convenient point, to the city of Nashville, on the north side of the Cumberland River to the Kentucky State line, so as to intersect with any company that now is, or hereafter may be, incorporated by the Legislature of Kentucky, by the most direct and practicable route to Louisville, as to intersect the State line at such point as the company may elect.

SEC. 18. That said company is hereby invested, for the purpose of making said road, with all the powers, rights, and privileges, and subject to all the liabilities and restrictions that were conferred and imposed on the Henderson and Nashville company, by an act passed 9th November, 1849.

SEC. 19. That it shall and may be lawful for the company incorporated by the — Section of this Act, as to negotiate with

any other railroad company, chartered by the State of Kentucky, who may desire to extend their road over any portion of the route herein designated, to transfer the rights herein conferred upon them, either in whole or in part, to such company or companies, and thereupon such company or companies shall have the same rights, privileges, and immunities, in making said road or any part of it on the route aforesaid, as are herein conferred on the company herein incorporated by the — Section of this Act, and be subject to the same limitation and restrictions.

SEC. 20. That the persons above named in the — Section of this Act, shall open books for the subscription of stock at the same time that the commissioners are required to do so, by the charter incorporating the Henderson and Nashville company, and that Neill S. Brown, of Davidson County, A. G. Green, Robertson County, together with such persons as may be designated, by the charter incorporating this company in Kentucky, shall form the local board, and said board shall be invested with all the powers and subject to all the restrictions that the local board of the Henderson and Nashville company are, and in place of meeting at Hopkinsville they shall meet at Bowling Green, in Kentucky.

SEC. 21. *Be it further enacted*, That John O. Johnson, of Bledsoe County, and Wm. Hickman, of Hamilton County, shall have the further time of two years from and after the passage of this Act, to open and put in repair a turnpike road, running across Walden's Ridge, from Bledsoe County to Hamilton County.

LANDON C. HAYNES,
Speaker of the House of Representatives.

JOHN F. HENRY,
Speaker of the Senate.

Passed, February 1, 1850.

CHAPTER LXXVI.

AN ACT to incorporate the Nashville and Louisville Railroad Company.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That for the purpose of establishing a communication, by railroad, between the cities of Nashville and Louisville, in the State of Kentucky, through the town of Gallatin, in Sumner County, commencing on the north bank of Cumberland River, at some central or convenient point to the city of Nashville, the formation of a company, to be called the Nashville and Louisville Railroad Company, is hereby authorized, which, when formed, shall have corporate existence in each of the States aforesaid; *Provided*, That said Company shall have the privilege of crossing said river, and conveying to the city from its depot on the north side of the river, freights and passengers in cars drawn by animal power.

SEC. 2. *Be it further enacted*, That the books for the subscription of 50,000 shares of capital stock for said company, of $100 each, shall be opened on the first Monday in June next, and shall be kept open for 100 days, between the hours of ten o'clock in the morning and four o'clock in the afternoon of each of these days (Sundays excepted) at the following places, and at such other places in the United States as the following commissioners, or a majority, may designate: In the city of Nashville, Col. E. H. Foster, John Shelby, J. P. W. Brown, and N. Hobson; in the town of Gallatin, Jo. C. Guild, Wm. M. Blakemore, Wm. H. Crutcher, and Elijah Boddie; in the town of Carthage, H. B. McDonald, and William Cullom; in the town of Scottville, Wm. F. Evans, J. C. Mulligan, A. Drain, and R. J. Foster; in the town of Glasgow, G. W. Trabue, B. B. Crump, J. W. Ritter, and Wm. Garnett; in the town of Bowling Green, A. G. Hobson, Jacob Vanmeter, C. T. Dunavan, and Thomas Quigley; in the town of Munfordsville, G. T. Wood, B. L. Kerr, Lewis Barret, and John Brown; in the town of Bardstown, Ben Hardin, C. A. Wickliffe, Daniel Howell, and Thomas A. Riley; in the town of Elizabethtown, J. L. Helm, C. G. Wintersmith, Thos. S. Crutcher, and Bryan R. Young; in the city of Louisville, James Guthrie, H. T. Curd, Hamilton Smith, and James Trabue; who shall have the power to appoint three

persons in the towns and cities of any of the States of these United States, to open books for a similar purpose, and to fix such days as they may think proper, before the first day of June next, for opening books and receiving subscriptions for capital stock.

SEC. 3. That any three of the above named commissioners, or of such persons as may be appointed by them for that purpose, shall at each of those places named, or such as may be named and designated, open books and receive subscriptions for stock in the said railroad company, during the time the said books are directed to be kept open; and on each share to be subscribed shall demand and receive the sum of five dollars, without which the subscription shall be void.

SEC. 4. That as soon as the time for receiving subscriptions as aforesaid shall have expired, the said commissioners shall respectively deposit all the money so received by them, in some incorporated bank, redeeming its notes in specie, in the State where the notes shall have been received, to the credit of the Nashville and Louisville Railroad Company, and shall also forward a correct list of all the subscribers to the said stock, with the number of shares each subscriber has taken, to a central commission, to be composed of the following persons: John J. White, of Gallatin; John G. Rogers, of Glasgow; C. A. Wickliffe, of Bardstown; Neill S. Brown, of Nashville; and James Guthrie, of Louisville; who, or a majority of whom, shall meet at the town of Glasgow, in the State of Kentucky, on the first Monday in November, 1850, and ascertain the whole number of shares taken in said company, and publish the same in some newspaper in the city of Nashville and in the city of Louisville, on, or before, the third Monday in November, 1850, and if the number of twenty thousand shares shall have been subscribed, on each of which there shall have been paid the sum of five dollars, the Nashville and Louisville Railroad Company shall be regarded as formed, and the said central commission, or a majority of them, shall sign and seal four duplicate declarations to that effect, with the names of all the subscribers appended, and cause one of these duplicates to be deposited in the offices of the Secretaries of the States of Tennessee and

Kentucky; and thenceforth, and from the day of closing the books of subscription as aforesaid, the said subscribers of the stock shall form one body politic and corporate in deed and in law, in the States aforesaid, by the name and for the purposes aforesaid.

SEC. 5. That in case any of the persons forming said central commission shall not attend at Glasgow on the first Monday in November, 1850, or attending, should refuse, or be unable to act, the remaining member, or members, of said central commission shall forthwith fill the vacancy, and the person, or persons, so appointed shall constitute a part of said commission.

SEC. 6. But if on closing the books aforesaid, the number of twenty thousand shares shall not have been subscribed, then and in that case, the said central commission, by themselves or their agents, may receive subscriptions from any of the States of these United States, and also from individuals or bodies corporate, until the number of twenty thousand shares shall have been subscribed; *Provided*, The same shall be done on or before the first day of January, 1855, and when the said number of fifty thousand shares shall have been subscribed, the said subscription shall be closed; the subscribers shall thenceforth form a body corporate as aforesaid, and the declaration thereof shall be made, and deposited in the offices of the Secretaries of State in manner aforesaid; subscriptions for stock received by the said central commission, or their agents, shall be accompanied with the certificate of some specie-paying bank, in some of the said States, that an amount equal to five dollars on each share subscribed, has been deposited by the subscribers to the credit of the said company.

SEC. 7. If, on closing the books, on the first day of January, in the year eighteen hundred and fifty-five, the number of twenty thousand shares shall not have been subscribed, the money paid by each subscriber shall be returned to him, by one or more of the commissioners who received it, indorsing on the receipt given for it a check on the bank where it has been deposited, which the bank shall be bound to pay only in case the central commission, or a majority of them, shall have

published a declaration that the formation of the company has failed for want of twenty thousand shares being subscribed.

SEC. 8. The said Nashville and Louisville Railroad Company, so formed as aforesaid, shall have succession of members for ninety-nine years; may have a common seal; may sue and be sued, plead and be impleaded, in any court of law or equity, and may make all such regulations, rules and by-laws as are necessary for the government of the corporation, or for effecting the object for which it is created, provided that such regulations, rules and by-laws shall not be repugnant to the laws and constitution of the said States or the United States, provided that notice or service of process upon the principal ostensible officer or agent of the company in the State from whose court that process emanated, shall be deemed and taken to be due and lawful notice or service of process upon the company, so as to bring it before the court.

SEC. 9. The affairs of said company shall be managed and directed by a board, to consist of ten directors, of whom two shall be elected from stockholders residing in the State of Tennessee, and five from the stockholders residing in the State of Kentucky, and the remaining three shall be elected from among all the stockholders, without regard to their place of residence.

SEC. 10. The President of the company shall be elected by the directors from among their own members in such manner as the regulations of the corporation may prescribe.

SEC. 11. As soon as the number of twenty thousand shares shall be subscribed in the manner aforesaid, it shall be the duty of the commissioners appointed to declare the same, to appoint a time for the stockholders to meet at Glasgow, in the State of Kentucky, which they shall cause to be published in one or more newspapers published in each of the States of Tennessee and Kentucky, at which time and place the said stockholders in person, or by proxy, shall proceed to elect the directors of the company, and to enact all such regulations, rules and by-laws as may be necessary for the government of the corporation and the transaction of its business; the persons elected directors at this meeting shall serve for such period, not exceeding one year, as the stock-

holders may direct; and at this meeting the stockholders shall fix on the day and place or places, where the subsequent election of directors shall be held, and such elections shall thenceforth be annually made; but if the annual elections should pass without any election of directors, the corporation shall not be thereby dissolved, but it shall be lawful on any other day to hold and make such election, in such manner as may be prescribed by a by-law of said corporation.

SEC. 12. The Board of Directors may fill all vacancies which may occur in it during the period for which the board may have been elected, and in the absence of the President may fill his place by electing one of their body a President *pro tempore*.

SEC. 13. All contracts and agreements authenticated by the President of the board, shall be binding on the company without seal, or such other mode of authentication may be used as the company by their by-laws may adopt.

SEC. 14. The Board of Directors shall not exceed in their contracts the amount of the capital of the corporation, and the funds which the company may have borrowed and placed at the disposal of the board; and in case they should do so, the President and directors who may be present, and making such contract or contracts so exceeding the amount aforesaid, shall be jointly and severally liable for the excess both to the contractor or contractors and the corporation; *Provided*, That any one may discharge himself from such liabilities by voting against such contract or contracts, and causing such vote to be recorded on the minutes of the board, and giving notice thereof to the next general meeting of the stockholders.

SEC. 15. The company shall have power, and may proceed to construct, as speedily as their means will permit, railroads with one or more tracks, to be used with steam, animal, or other power, which will pass through the State of Tennessee, or Kentucky, so as to form continuous lines of said road between the cities of Nashville and Louisville, and the lines of said road shall be established by the Board of Directors, subject to the control of the stockholders at a general meeting; the said company may use any section of the railroad by them to be constructed, before the whole shall be completed, subject to the

rates hereinafter mentioned; *Provided*, That said contemplated road shall be so located as that in its course it shall touch at the town of Gallatin, in the State of Tennessee, in such manner as to afford to said town all the benefits of which the road is capable, and there shall be a convenient and suitable depot established at some proper place in said town of Gallatin by the company, adequate to the business, commerce, and trade of said town.

SEC. 16. The said companies may, by the consent of the Legislatures of Tennessee and Kentucky, construct branches of their road; *Provided*, Said branches shall not conflict with any chartered rights, existing at the time of their construction, and provided that they shall be attended with no exclusive privileges, except the exclusive right of transportation of goods, wares, merchandise, produce, and persons thereon, subject to the rates hereinafter mentioned; and provided, also, that nothing in this Act shall prevent the State through which any part of the said road, or its branches, may pass, from establishing rights of way across such main road or branches.

SEC. 17. That said company shall have the exclusive right of transportation or conveyance of persons, goods, wares, merchandise, and produce, over the said railroad and its branches, by them to be constructed; *Provided*, That the charge for transportation or conveyance shall not exceed thirty-five cents per 100 pounds on heavy articles, and ten cents per cubic foot on articles of measurement, for every 100 miles, and five cents a mile for every passenger; and provided, also, that the said company may, when they see fit, farm out their rights of transportation on the said road, or any of its branches, subject to the rates above mentioned.

SEC. 18. The said company, and every person who may have received from them the right of transportation of goods, wares, merchandise, and produce, over said road, shall be deemed and taken to be commom carriers, as respects all goods, wares, merchandise, and produce entrusted to them for transportation.

SEC. 19. The Board of Directors may call for the payment of ninety-five dollars on each share of the stock, in sums not exceeding five dollars, in every sixty days, except after eighty

dollars have been paid on each share; the remaining twenty dollars may be called for, in two installments, which shall be at least sixty days apart, or the payments may be called for in smaller sums and at more distant periods; the call for each installment shall be advertised in one or more newspapers in Nashville and Louisville, and at such other places as may be directed by the rules of the company, at least one month before the time the same is to be paid, according to the rules of the company; any of the installments, so called for as aforesaid, shall induce a forfeiture of the share or shares, on which default shall be so made and all payments thereon; and the same shall vest in and belong to the company, and may be restored to the owners by the Board of Directors, if they deem proper, on the payment of all arrears on such shares, and legal interest thereon, or the directors may sue the stockholders for their installments due, at their discretion.

SEC. 20. The stock in said company may be transferred in such manner and form as may be directed by the by-laws of the company.

SEC. 21. The said company may at any time increase the capital of said company to a sum sufficient to complete the said road or its branches, and stock it with every thing necessary to give it full operation and effect, either by opening books for new stock, or by selling such new stock, or by borrowing money on the credit of the company, on the mortgage of its charter and works, and the manner in which the same shall be done in either case shall be prescribed by the stockholders at a general meeting.

SEC. 22. The board shall once in every year at least, make a full report on the state of the company and its affairs, to a general meeting of the stockholders, and oftener, if directed by a by-law, and shall have power to call a general meeting of the stockholders, when the board may deem it expedient, and the company may provide in their by-laws for occasional meetings being called, and prescribe the mode thereof; and the company may provide, by a by-law, for the votes of stockholders, for directors being taken at more than one place, as also for taking their votes on any question relative to the repeal, alteration, or

amendment of, or addition to, any of the rules, regulations, or by-laws of the company, proposed by the general Board of Directors.

SEC. 23. It shall be lawful for the said company from time to time, to vest so much or such part of their capital or their profits, as may not be required for immediate use, until it may be so required, in the public stocks of either of the States of Tennessee or Kentucky, or of any incorporated banks in the said States, provided the same so invested shall at no one time exceed one million and a half of dollars.

SEC. 24. No person but a citizen of the United States, and being a *bona fide* stockholder, in his own right, of at least twenty shares, which he shall have held at least three months previous to his election (except at the first election), shall be President, or a director of the general board; nor shall any stockholder vote, in person or by proxy, at any general or other election (except the first), who shall not have held in his own right the share on which he offers to vote, at least three months previous to such election.

SEC. 25. The stockholders may provide by a by-law as to the number of stockholders, and the amount of stock to be held by them, which shall constitute a quorum for transacting business at any regular or occasional meeting of stockholders or directors.

SEC. 26. No member of the Board of Directors or officers, or agent, or servant of the company, shall be directly or indirectly interested in any contract for work, nor shall any director vote on the passing of any bill for materials in which he is directly or indirectly concerned, nor shall any director, officer, agent or servant of said company, be interested directly or indirectly in the purchase of lands, buildings or other property immediately on the line of said road or any of the branches thereof, without first having offered to the Board of Directors, in writing, the right of pre-emption, to alter any part of such lands, buildings or other property, which the said board may think proper to purchase for the use of the company, and every director, officer, agent, or servant, violating this provision, may be removed from the board, his office, or employment, by vote of the directors;

and every purchase, made in violation of this section, shall inure to the benefit of the company, if the Board of Directors choose to avail themselves thereof.

SEC. 27. Any stockholder in the company may vote by proxy, who must be a resident citizen of the United States, and, before he votes, he may be required by a stockholder to swear, that to his belief the stock *bona fide* belongs to the person whom he represents; before any stockholder votes in his own right or for any estate, he may be required by any stockholder to swear that he is the *bona fide* owner of the said stock in his own right, or as the legal representative of the testator or intestate whom he represents, and that no person but himself or the estate, is directly or indirectly interested therein to his belief; any State holding stock may vote by such person as the Legislature or Governor thereof may appoint, or as may be appointed in any other way pursuant to the laws of the State made for that purpose.

SEC. 28. That in voting in the election of directors, and in voting on all questions, which may come before a meeting of the stockholders, or which may be submitted to the decision of the stockholders in any other manner, the votes shall be taken according to the following scale: the owner of one or two shares shall be entitled to one vote; the owner of not less than three and not more than four shares, shall be entitled to two votes; the owner of not less than five nor more than six shares, shall be entitled to three votes; the owner of not less than seven nor more than eight shares, to four votes; the owner of not less than nine nor more than eleven shares, to five votes; the owner of not less than twelve nor more than fifteen shares, to six votes; the owner of not less than sixteen nor more than twenty shares, to seven votes; the owner of not less than twenty-one nor more than twenty-six shares, to eight votes; the owner of not less than twenty-seven nor more than thirty-three shares, to nine votes; the owner of not less than thirty-four nor more than forty shares, to ten votes; and the owner of every ten shares above forty, shall be entitled therefor to one vote; *Provided*, That no individual, corporation, or State holding stock in said company, shall be entitled to more than two hun-

dred votes, and one vote for every fifty shares over three thousand shares; any person being a subscriber or stockholder, who may offer to vote as a proxy, may be required by any subscriber or stockholder to swear that he has no interest, directly or indirectly, in the stock on which he offers to vote as proxy; a trustee of stock shall not vote on shares held by him in trust, expressed or declared, where the *cestui-que-trust* holds other shares either in his own name, or in the name of another trustee, but the *cestui-que-trust* may vote on all shares owned by him, whether legally or equitably, according to the scale aforesaid.

SEC. 29 The said company may purchase, have and hold, in fee, or for a term of years, any lands, tenements or hereditaments, which may be necessary for the said road, or any branch or appurtenance thereof, or for the erection of depositories, store-houses, houses for the officers, servants, or agents of the company, or for workshops, or for foundries, to be used for the said company, or for procuring timber, stone, or other materials necessary to the construction of the road, its branches, or apparatus, or for effecting transportation thereon, and for no other purpose whatever.

SEC. 30. The said company shall have the right, when necessary, to conduct the said railroad, or any branch thereof, across or along any public road or water course, provided that the said road, and the navigation of such water course, shall not be thereby obstructed.

SEC. 31. The said company may purchase, have, and hold any bridge or turnpike road, over which it may be necessary to carry the said railroad; and when such purchase is made, to hold the said bridge or turnpike road, on the same terms and with all the rights which belong to the individual, or individuals, or corporation, from which such purchase may be made, provided that the said company shall not obstruct any public road without constructing another as convenient as may be.

SEC. 32. That where any lands or right of way may be required by the said company, for the purpose of constructing their road, and for want of agreement as to the value thereof, or from any other cause, the same cannot be purchased from the owner or owners, the same may be taken at a valuation to

be made by five commissioners, or a majority of them, to be appointed by the Circuit Court of the county where some part of the land or right of way is situated; and the said commissioners, before they act, shall severally take an oath before some justice of the peace, faithfully and impartially to discharge the duty assigned them. In making the said valuation the commissioners shall take into consideration the loss or damage which may accrue to the owner or owners in consequence of the land being taken, or the right of way surrendered; and also the benefit and advantage he, she, or they, may receive from the erection or establishment of the railroad or works, and shall state particularly the nature and amount of each, and excess of loss and damage over and above the benefit and advantage; shall form the measure of damage or valuation of the said land or right of way; the proceedings of the said commissioners, accompanied with a full discription of the land or right of way, shall be returned under the hands and seals of a majority of the commissioners to the court from which the commission issued, there to remain of record; in case either party to the proceeding shall appeal from the said valuation to the next session of the court granting the commission, and give reasonable notice to the opposite party of such appeal, the Court shall order a new valuation to be made, by a jury who shall be charged therewith in the same term, or as soon as practicable, and their verdict shall be final and conclusive between the parties, unless a new trial shall be granted, and the parties shall have the right of appeal to the Supreme Court or Court of Appeals; the party appealing shall be governed in all respects by the laws regulating appeals in the State where said case or cases may be tried, and the lands or right of way so valued by the commissioners or jury, shall vest in the said company in fee-simple, so soon as the valuation may be paid, or when refused, may be tendered; when there shall be an appeal as aforesaid from the valuation of the commissioners, by either of the parties, the same shall not prevent the work, intended to be constructed, from proceeding; but where the appeal is made by the company, requiring the surrender, they shall be at liberty to proceed in their work, only on condition of giving the opposite party a bond, with good security, to be approved

of by the clerk of court where the valuation is returned, in a penalty equal to double the valuation, conditioned for the payment of the said valuation and interest, in case the same be sustained, and in case it be reversed, for the payment of the valuation thereafter to be made by the jury and confirmed by the court.

SEC. 33. In the absence of any contract or contracts with the said company, in relation to lands through which the said road or its branches may pass, signed by the owner thereof, or by his agent, or any claimant in possession thereof, which may be confirmed by the owner thereof, it shall be presumed that the land upon which the road or any part of its branches, may be constructed together with a space of one hundred feet on each side of the center of said road, has been granted to the company by the owner or owners thereof, and the said company shall have good right and title thereto, and shall have, hold and enjoy the same, to be used only for the purposes of the said road and no longer, unless the person or persons owning the said land, at the time that part of the said road, which may be on the said land, was finally surveyed and located, or those claiming under him, her, or them, shall apply for an assessment of the value of said land as hereinbefore directed, within one year after that part of said road was finally surveyed and located, and he, she or they notified thereof in writing; and in case the said owner or owners, or those claiming under him, her or them, shall not apply for such assessment within one year, after the said part was finally surveyed and located, and he, she or they notified thereof as aforesaid, he, she or they shall be forever barred from recovering the said land, or having any assessment or compensation therefor; *Provided*, That nothing herein contained shall affect the rights of *femes covert* or infants, until two years after the removal of their respective disabilities.

SEC. 34. All lands not heretofore granted to any person, not appropriated by law to the use of the State, within one hundred feet of the center of said road, or its branches, which may be constructed by the said company, shall vest in the company as soon as the line is definitely laid out through it, and any grant thereafter shall be void.

SEC. 35. That if any person or persons shall intrude upon the said railroad or any branch thereof, or part thereof, by any manner of use thereof, or of the rights and privileges connected therewith, without the permission, or contrary to the will of said company, he, she, or they shall forthwith forfeit to the said company all the vehicles that may be so intruded on the said road, and the same may be recovered by suit at law, and the person or persons so intruding may also be indicted for a misdemeanor, and upon conviction fined and imprisoned by any court of competent jurisdiction.

SEC. 36. If any person shall wilfully, or maliciously, destroy, or in any manner hurt, damage, or obstruct, or shall wilfully and maliciously cause, or aid, or assist, or counsel and advise any other person, or persons, to destroy, or in any manner to hurt, damage, injure or obstruct the said railroad or any branch thereof, or any bridge or vehicle used for or in the transportation thereof; such person, or persons, so offending, shall be liable to be indicted therefor, and on conviction, shall be imprisoned not more than six, nor less than one month, and pay a fine not exceeding five hundred dollars, nor less than twenty dollars, at the discretion of the court before which such conviction shall take place, and shall further be liable to pay all the expenses of repairing the same; and it shall not be competent for any person so offending against the provisions of this clause, to defend himself by pleading or giving in evidence that he was owner or agent, or servant of the owner of the land where such destruction, hurt, damage, injury, or obstruction was done or caused at the time the same was caused or done.

SEC. 37. Every obstruction to the safe and free passage of vehicles on said road, or its branches, shall be deemed a public nuisance, and may be abated as such by any officer, agent, or servant of the company; and the person causing such obstruction may be indicted and punished for erecting a public nuisance.

SEC. 38. The said company shall have the right to take at the store-houses they may establish on, or annexed to their railroad or the branches thereof, all goods, wares, merchandise, and produce intended for transportation; prescribe the rules of priority, and charge and receive such just and reasonable compensation

for storage, as they by rules may establish, which they shall cause to be published, or as may be fixed by agreement with the owner, which may be distinct from the rates of transportation; *Provided*, That the said company shall not charge or receive storage on goods, wares, merchandise, or produce which may be delivered to them at their regular depositories for immediate transportation, and which the company may have the power of transporting immediately.

SEC. 39. The profits of the company, or so much thereof as the general board may deem advisable, shall, when the affairs of the company will permit, be semi-annually divided among the stockholders in proportion to the stock each may hold.

SEC. 40. That the capital stock in the said company, the dividends thereon, and the roads and fixtures, depots, workshops, warehouses, and vehicles of transportation, belonging to the said company, shall be forever exempt from taxation in each and every of the said States of Tennessee and Kentucky, and it shall not be lawful for either of the said States, or any corporate or municipal police, or other authority thereof, or of any town, city, county, or district thereof, to impose any tax on such stock or dividends, property or estate; *Provided*, The stock or dividends, when the said dividends shall exceed the legal interest of the State, may be subject to taxation by the State in common with and at the same rate as money at interest, or interest thereon, and when the State shall impose a tax on the dividends declared in favor of the stockholders of the company, the tax shall extend only to such proportion of the said dividends and capital stock, as the part of the road in that State shall bear to the whole road, from the profits of which the said dividends have arisen, which tax, when imposed, shall be retained by the company out of said dividends, and paid to the State; but no tax shall be imposed, so as to reduce the part of the dividends to be received by the stockholders, below the legal interest of the State.

SEC. 41. The following officers and persons in the actual service of the said company, be and they are hereby exempt from the performance of jury and ordinary militia duty, viz: The President of the Board of Directors, the chief and assistant

engineers, the secretaries, auditors, and accountants of the board, keepers of the depositories, guards stationed on the road to protect it from injury, not exceeding one man to every five miles, and such persons as may be working the locomotive engines, and traveling with cars for the purpose of attending to transportation of goods or passengers on the road, not exceeding one engineer and his assistant, and the necessary firemen to each locomotive engine, and one person to each passenger car and every five cars for transporting goods, etc.

SEC. 42. That the said company is hereby expressly prohibited from carrying on any banking operations, and from effecting any insurance on lives or property, except on goods transported on said railroad or its branches, or in the company's custody, for or in consequence of such transportation.

SEC. 43. And the said company shall be entitled only to such powers and privileges, as shall be granted to it, by all the Legislatures incorporating it, and the powers necessary and proper to give them effect, and shall be subject to all the restrictions and disabilities which may be imposed on it by either of the said Legislatures, by the act of incorporation; so that its powers, privileges, and disabilities may be similar in all the States of Tennessee and Kentucky.

SEC. 44. Any individual, or individuals, bodies corporate or States, may construct branches to unite with the main road from Nashville to Louisville, or any branch thereof, with the permission of the Legislature of the State where such branches may be situated, and by and with the written assent of the President and directors of said railroad company; and it shall be the duty of the said company, when required, to receive on their road and its branches, the fully loaded freight cars from such branches so to be united with them, and to transport the same to their point of distination, and to return them, if required, without charging the loads thereon, or charging for the transportation of the goods, wares, merchandise, and produce thereon, any greater rate of freight than they charge for similar goods, wares, merchandise, and produce in their own cars; *Provided*, That the company shall not be compelled to receive any cars on their road or branches, unless they are constructed in

the same manner, and of equal strength with their own cars, of which the engineers of that section of the main road shall be the judge; *And provided*, That the company shall not be compelled to receive any car from such branches, without receiving payment for at least twenty miles transportation; *And provided also*, That the said company shall be entitled, in all respects, to similar and equal privileges, on any branches constructed to unite with their road, or branches subject to the same restraints.

SEC. 45. The said company shall begin the construction of said road within five years from the first day of June, one thousand, eight hundred and fifty, and complete the main road from the termination at Louisville to Nashville, in fifteen years from and after the passage of this Act.

SEC. 46. When the road shall be completed from the termination at Louisville to Nashville, it shall be the duty of the company to keep all parts thereof in a state for regular transportation, on the whole length thereof, and in case the said railroad shall be out of repair, or so injured in any part, as to interrupt the transportion thereon, it shall be the duty of the company, with due expedition, to repair the same; and in case the company should neglect, unreasonably, so to do, it shall be lawful for a judge of the court of last resort, having general chancery powers in the State, where such repair is required, at chambers, after due notice to the company, to make an order that no charge shall be made for transportation of goods, wares, merchandise, or produce, on any part of said road, within twenty-five miles of said interruption, which order shall not release the company from their obligation to transport on all parts of the road which may be in repair; *Provided*, That no such order shall be made when it shall appear to the judge, that the company used due diligence, to make the said repair, or that the part injured is incapable of being restored, or that no other line of road, or another mode of conveyance may be beneficially to the public substituted in place of the part injured or out of repair, which order of the judge shall be continued in force, only until the expiration of ten days after the next meeting of the court of last resort, of which the said judge shall be a member, unless the same shall be confirmed by the said court;

and any judge of the said court at chambers, may repeal such original or confirmed order, on evidence that the injury is repaired, or the substitue provided, and transportation is resumed on the part of the road embraced in said order.

SEC. 47. That the said President and directors, or a majority of them, may appoint all such officers, agents, engineers, and servants whatsoever, as they may deem necessary for the transaction of the business of the company, and may remove any of them at their pleasure; that they, or a majority of them, shall have power to fix and determine by contract the compensation of all the engineers, officers, agents, servants, and others, in the employment of the said company, and to regulate by their by-laws, the manner of adjusting and settling all accounts in favor or against the company; that they or a majority of them shall have power to erect buildings and depots, for the storage and safe-keeping of articles entrusted to or with them, for transportation, and for workshops, offices, and other purposes necessary for the business, or for the safe-keeping of the locomotives, cars, and other property of the company; and they, or a majority, shall have power to direct the manner, and by what evidence, the stock in said company may be transferred.

SEC. 48. The President and directors, or a majority of them, shall have power to cause such examinations and surveys to be made for the route of such railroad and branches, as may be necessary to the selection by them, of the most advantageous line, route, course, or way for said railroad, and shall, as soon thereafter as practicable, select and determine the route on which said railroad shall be constructed, and locate the same.

SEC. 49. That said corporation shall have power and authority, to borrow not exceeding two millions of dollars, at an interest not exceeding seven per cent. per annum, and to pledge and mortgage the road of any other property, or any part therof, belonging to the company, to secure the payment of the money so borrowed, and may issue bonds, or certificates of stock therefor, but no bond, certificate of stock, or notes shall be issued to circulate as bank notes.

SEC. 50. This charter shall, from time to time, be amended by the Legislatures of the States of Tennessee and Kentucky,

whenever the President and directors shall unanimously petition for amendments, specifying in the petition, the nature of the amendments, and when such amendments shall be adopted by the Legislatures of the States of Tennessee and Kentucky, and submitted to the directory, and be accepted and adopted unanimously, by the President and directors, they shall be obligatory on the stockholders, and not otherwise.

SEC. 51. That this Act shall become a law, whenever the State of Kentucky may enact the same for the same purpose, with such modifications and amendments as they may deem right, not inconsistent with the provisions hereof; *Provided, however*, That if the said State of Kentucky, should not enact or co-operate in this charter during the present year, when the same is enacted, the time shall be allowed thereafter, as is now allowed to do and perform certain things required by the provisions of this Act.

LANDON C. HAYNES,
Speaker of the House of Representatives.

JOHN F. HENRY,
Speaker of the Senate.

Passed February 9, 1850.

AN ACT to charter the Louisville and Nashville Railroad Company.

SECTION 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That Colonel Thomas Anderson, James S. Speed, James Guthrie, Levin L. Shreve, and William F. Bullock, of the city of Louisville; Robert N. Miller, Joshua F. Speed, David Meriwether, Thomas S. Camp, and Edward D. Hobbs, of the county of Jefferson; J. G. Guthrie, C. D. Shean, Daniel K. Haycraft, S. B. Thomas, John Cofer, John L. Helm, and George L. Miles, of the county of Hardin; George T. Wood, David Highbaugh, Thomas Lafferty, William Lewis, J. B. Cobb, O. G. Waggoner, W. H. Powell, Aden Combs, and

George Garland House, of the county of Hart; Israel A. Cook, Wm. Ford, Ambrose Kirtley, W. C. Lucas, and A. M. Barret, of the county of Edmonson; Sam'l Murrell, Henry Grider, John B. Helm, Warner L. Underwood, Thomas Quigley, and Benjamin C. Smith, of the county of Warren; John Hoy, Noah Hampton, Stanford Duncan, W. H. McGoodwin, L. Finn, and William H, Wooten, of the county of Simpson; R. F. Samuels, R. H. Field, H. F. Kalfus, H. C. Thomas, N. C. Summers, W. R. Thompson, N. P. Sanders, and W. B. Hamilton, of the county of Bullitt; C. Nourse, Joseph Brown, D. S. Howell, C. P. Mattingly, J. M. Doom, E. B. Smith, G. W. Hite, James M. Brown, S. Johnson, John H. Talbott, T. W. Riley, and T. P. Linthicum, of the county of Nelson; S. W. D. Stone, J. H. Rodman, John Duncan, W. P. Read, W. L. Morris, W. Howell, and J. P. Hamilton, of the county of Larue; A. Watkins, J. G. Hardy, P. J. Kirtley, G. W. Trabue, F. Gorin, A. Trigg, R. Murrell, John T. Rogers, James Page, W. E. Munford, J. P. Bates, and W. J. Wood, Jr., of the county of Barren; John H. Page, W. F. Evans, A. A. Harvey, Samuel Carpenter, W. Thomas, R. J. Foster, James C. Mulligan, and James Stark, of the county of Allen; Josiah Brummall, John Barrett, W. B. Allen, Woodson Williams, and Peter Anderson, of the county of Green; A. Hoskins, R. Calvin, Alfred Hazlewood, A. F. Gowdy, Ignatius Abell, and W. N. Marshall, of the county of Taylor; be and they are hereby appointed commissioners, under the direction of whom, or any three of them, in each of said counties and city aforesaid, subscriptions may be received to the capital stock of the Louisville and Nashville Railroad Company, hereby incorporated; and they may cause books to be opened at such times and places as they may direct, for the purpose of receiving subscriptions to the capital stock of said company, after having given such notice of the times and places of opening the same as they may deem proper; and after the the first opening of said books they may continue them open for such time, and may adjourn to such places, as they may deem expedient; and if such a subscription to the capital stock of said company as is necessary to its incorporation shall not have been obtained, said commissioners, or a majority of them, may cause the said books to be opened and kept open, from

time to time, and at such places as may seem expedient, for the space of two years thereafter, or until the sum necessary for the incorporation shall be subscribed; *Provided*, that any subscription, tendered at any time or place other than that advertised by said commissioners, if accepted by them, shall be as valid against the party subscribing as if received at the time or place advertised; and if any of said commissioners shall die, resign, or refuse to act, during the continuance of the duties devolved on them by this act, another may be appointed in his stead by the remaining commissioners, or a majority of them, of the county for which the said commissioner, so not acting, was appointed a commissioner.

SEC. 2. That the capital stock of said Louisville and Nashville Railroad Company shall be three millions of dollars, in shares of one hundred dollars each, which may be subscribed for by any individual or corporation; and as soon as three thousand shares of said capital stock shall be subscribed, the subscribers of said stock, their successors and assigns, shall be, and they are hereby declared to be, incorporated into a company by the name of the Louisville and Nashville Railroad Company, and by that name shall be capable of purchasing, holding, selling, leasing, and conveying real estate not exceeding ten thousand acres, and personal and mixed estate, so far as the same shall be necessary for the purposes of their incorporation, and no further; and shall have perpetual succession, and by said corporate name shall sue and be sued, and may have and use a common seal, which they shall have power to alter or renew at pleasure; and shall have, enjoy, and exercise all the powers, rights, and privileges which other corporate bodies may lawfully do.

SEC. 3. That if more than thirty thousand shares shall be subscribed to the capital stock of said company, the said commissioners, or a majority of them, shall reduce by striking off in succession from the largest number of shares subscribed by single individuals, or corporations, until the subscriptions shall be reduced to thirty thousand shares, so as to equalize the stockholders as far as may be.

SEC. 4. That at every subscription of stock there shall be paid, at the time of subscribing, to the said commissioners, or their agents appointed to receive such subscriptions, either in money or a note negotiable and payable at some bank in the State, as said commissioners may elect, at sixty days date or longer, at the option of the commissioners or their agents, the sum of one dollar on every share subscribed, and the residue thereof shall be paid in such installments and at such times as may be required by the Board of Directors of said company; *Provided*, That no payment shall be demanded until at least thirty days' public notice of such demand shall have been given by said Board of Directors, by a publication in one or more of the newspapers published in Louisville, Bardstown, Glasgow, Elizabethtown, and Bowling Green; nor shall more than twenty-five per cent. of each share of stock be called for in any one year; but if the exigencies of the company should require the payments of the stock to be made more rapidly than is provided for herein, or should the Board of Directors, or a majority of the whole number elected, consider it expedient, it shall be lawful for them to borrow, on the credit of said company, a sum of money not exceeding five hundred thousand dollars; and if any subscriber shall fail or neglect to pay any installment or part of said subscription demanded according to the provisions of this section, the same may be recovered by action, in the name of said corporation, against such defaulting subscriber, before any tribunal having jurisdiction of such cases; and in all such actions publication as directed in this section shall be the only demand necessary to be proved; or, in case such failure or neglect to pay any installment or part of said subscription, demanded according to the provisions of this section, shall continue for the space of sixty days next after the time the same shall be due and payable, the Board of Directors may, in their discretion, order that the same shall be forfeited to the company, and they may also sell it for the benefit of the company if they think proper; but the said Board of Directors, by a majority of the whole board, may remit any such forfeiture on such terms as they may think proper; and provided further, that it shall be lawful to receive subscriptions to the capital stock of this company, payable in contracts, well secured, to build such parts

of the road, or to perform such work in the construction thereof, as may be accepted by the company.

SEC. 5. That if the subscription herein made necessary to the incorporation of said company shall not be obtained within ten years after the first opening of the books by the commissioners under this act, then this act, and all the subscriptions under it, shall be null and void; and said commissioners shall, after discharging the expenses of opening the books, return the residue of the money paid in upon the subscriptions to the several subscribers, in proportion to the sums respectively paid by each.

SEC. 6. That at the expiration of the period for which the books are first opened, if two thousand shares of the capital stock shall have been subscribed, or, if not, as soon thereafter as the same shall be subscribed, if within ten years after the first opening of said book, said commissioners, or a majority of them, shall call a general meeting of the subscribers, at such time and place as they may appoint, and shall give at least twenty days' public notice thereof in some one or more of the newpapers published in Louisville, Bardstown, Glasgow, Elizabethtown, and Bowling Green; and at such meeting said commissioners shall lay the subscription books before the subscribers then and there present, and thereupon the said subscribers, or a majority of them, then present, shall have the power to elect from among the stockholders seven directors by ballot, to manage the affairs of said company; and these seven directors, or a majority of them, shall have the power to elect a President of said company, either from among the directors or any other stockholder, and of allowing such compensation for his services as they may think proper; and in such election, and on all other occassions wherein a vote of the stockholders of said company is to be taken, each stockholder shall be allowed one vote for every share owned by it, him, or her; and every stockholder may, in writing, depute any other person to vote and act as its, his, or her proxy; and the commissioners aforesaid, or any three or more of them, shall be the judges of said first election of directors.

SEC. 7. That, to continue the succession of the President and directors of said company, seven directors shall be chosen an-

nually on the first Monday in June, every year, by the stockholders of said company, at such place as the President and directors may designate; *Provided*, That after the first election the said President and directors may change the time and place of holding all subsequent elections, upon publishing such change not less than thirty days prior to the election in the papers aforesaid; and that the directors of said company, or a majority of them, shall have the power to appoint judges of all elections, and to elect a President of said company, either from among the directors or any other stockholder, and to allow him such compensation for his services as they may deem proper; and if any vacancy shall occur, by death, resignation, or refusal to act of any President or director, before the year for which he was elected has expired, a person to fill such vacancy for the year shall be appointed by the President and directors of said company, or a majority of them; and that the President and directors of the company shall hold and exercise their offices until a new election of President and directors; and that all elections which are by this act or by the by-laws of said company to be made at a particular time, if not made at such time, may be made in thirty years thereafter, upon notice publicly given.

SEC. 8. That a general meeting of the stockholders of said company may be called, at any time during the interval between the annual meetings, by the President and directors, or a majority of them, or by the stockholders owing at least one-fourth of the whole stock subscribed, upon giving thirty days' notice of the time and place of holding the same, in one or more newspapers published in Louisville, Bardstown, Glasgow, Elizabethtown, and Bowling Green; and when any such meetings are called by the stockholders, such notice shall specify the object of the call; and if, at any such called meetings, a majority, in value, of the stockholders are not present, in person or by proxy, the same shall be adjourned, from day to day, without transacting any business, for any time not exceeding five days; and if, within said five days, stockholders having a majority, in value, of the stock subscribed, do not attend, such meetings shall be dissolved.

SEC. 9. That at the regular annual meeting of the stockholders of said company it shall be the duty of the President and directors in office, for the preceding year, to exhibit a clear and distinct account of the affairs of the company; that at any called meeting of the stockholders, a majority, in value, of the holders of the stock subscribed being present, may demand and require similar statements from the President and directors, whose duty it shall be to furnish them, when thus required; and that, all general meetings of the stockholders in said company, a majority of them, in value, may remove from office the President or any of the directors, and fill up the vacancies, thus made, in the same manner that they could do at their stated annual meetings.

SEC. 10. That the President and directors of said company, before he or they act as such, shall swear or affirm, as the case may be, that they will well and truly discharge the duties of their respective offices, to the best of their skill and judgment, and the said President and directors, or a majority of them, or a majority, in value, of the stockholders in said company, at any of the stated or called meetings of said stockholders, shall have power to elect or appoint a Treasurer of said company, and to require, and take of him such bond, in such penalty, and with such secureties, as they may prescribe, payable to said company, and conditioned to the faithful keeping and disbursing of all such moneys as may come to his hands, and with such other conditions as may be prescribed; upon which said bond, recovery may be had, for a breach of the conditions thereof, by suit, in the name of said company, in any court having jurisdiction thereof.

SEC. 11. That if any of the stock created by this act shall remain unsubscribed, until after the election of the President and directors, as provided for in the sixth section of this act, the said President and directors, or a majority of them, shall have power to open books and receive subscriptions to any of the capital stock which may remain untaken or unsubscribed for, or to sell or dispose of such untaken stock, for the benefit of the company, not under its par value; and the subscribers or

purchasers of said stock shall have all the rights of original subscribers, and subject to the same regulations.

SEC. 12. That the said President and directors, or a majority of them, may appoint all such officers, agents, or servants, as they may deem expedient for the business of the company, and they may remove any of them at pleasure; that they, or a majority of them, may determine, by contract, the pay of such officers, agents, and servants, and regulate by by-laws the manner of adjusting all accounts against the company; that they shall have power to erect warehouses, work-shops, depots, and all other buildings necessary for the transaction of the business of the company; that they shall have power to direct and regulate in what manner, and by what evidence, stock in said company may be transferred; and to pass all by-laws which they may deem necessary or proper for exercising the powers hereby vested in said company, and for carrying into effect this act; *Provided*, The same shall not be contrary to the laws of the United States or of this State.

SEC. 13. That if the capital stock of said company shall be deemed insufficient for the purposes of this act, it shall and may be lawful for the President and directors of said company, or a majority of them, to increase the same, by the addition of as many shares as they may deem necessary, not exceeding one million of dollars, giving notice as herein before prescribed.

SEC. 14. That the President and directors of said company are hereby vested with all powers and rights necessary to the construction of a railroad from the city of Louisville to the Tennessee line, in the direction of Nashville; the route to be by them selected and determined, not exceeding sixty-six feet wide, with as many sets of tracks as they may deem necessary; and that they may cause to be made contracts with others for making said railroad, or any parts of it; and that they, their agents, engineers, etc., or those with whom they may contract for surveying or making the same, or any part thereof, may enter upon, use, and excavate any land which may be wanted for the site of said road, or the erection of warehouses or other structures or works necessary to said road and its use, or for any other purpose necessary or useful in the construction or re-

pair of said road, or its works and appurtenances; and they may build bridges and construct tunnels; *Provided*, The same do not obstruct the navigation or navigable streams; may fix scales and weights, lay rails, take and use any earth, timber, gravel, stone, or other material, which may be useful or necessary for the proper construction, completion, or repair of said road.

Sec. 15. That the President and directors of said company, or a majority of them, or their authorized agents, may agree with the owner of any land, earth, timber, or stone, or any other materials, or any improvements, which may be wanted for the construction or repair of any of said roads, or any of their works, for the purchase or the use and occupation of the same, and if they cannot agree, and if the owner or owners, or any of them, be a *feme covert*, under age, *non compos mentis*, or out of the county in which the property wanted may lie, where such land and materials may be wanted, application may be made to any Justice of the Peace of such county, who shall, thereupon, issue his warrant, under his hand, directed to the Sheriff of such county, requiring him to summon a jury of twenty inhabitants, not related, or in anywise interested, to meet on the land, or near the property or materials to be valued, on a day named in said warrant, not less than ten nor more than twenty days after the issuing of the same; and if, at the time and place, any of said jurors do not attend, said Sheriff shall forthwith summon as many jurors as may be necessary with the jurors in attendance, and from them each party, or, if not present by agent or otherwise, the Sheriff then, for the party absent, may strike off four jurors, the remaining twelve shall act as the jury of inquest of damages; and, before they act as such, the said Sheriff shall administer to each of them an oath or affirmation, that he will justly and impartially fix the damages which the owner or owners shall sustain by the use and occupation of the said property required by the company; and the said jury, in estimating such damages, shall take into consideration the benefits resulting to the owner from conducting said road by, through, or near the property of said owners, but only in extinguishment of damages; and said jury shall reduce their verdict to writing, and shall sign the same, and it shall be returned by the Sheriff to the Clerk of his county, and by such Clerk shall be filed in

his office, and shall be confirmed by the court of said county, at its next session, if no sufficient cause to the contrary be shown; and, when so confirmed, shall be recorded by said Clerk at the expense of said company; but, if set aside, the court may direct another inquisition to be taken, in the same manner above prescribed; and such inquisition shall describe the property taken, or the bounds of the land condemned, and the duration of interest in the same, valued for the company; and such valuation, when tendered or paid to the owner or owners of said property, or his, her, or their legal representatives, or to the Clerk of the county in which said inquest is held, for their use, when said owners, etc., do not reside in said county, shall entitle said company to the estate, and interest in the same, thus valued, as fully as if it had been conveyed to it by the owner or owners of the same; and the valuation of the same, if not received when tendered, may at any time thereafter be received from the company, without costs, by the owner or owners, his or their legal representatives or heirs.

SEC. 16. That whenever, in the construction of said road or roads, it shall be necessary to intersect any other established road or way, it shall be the duty of said President and directors so to construct said road across such road or way as not to impede the passage of persons or property along the same; or where it shall be necessary to pass through the land of any person, it shall also be their duty to provide for such person proper wagon ways across said railroad, from one part of the land to the other; and if said company shall fail to provide proper wagon ways across said road, as provided in this section, it shall be lawful for any person to sue said company, and be entitled to such damage as a jury may think him or her entitled to, for such neglect.

SEC. 17. That whenever it shall be necessary for said company to have, use, or occupy any land, materials, or other property, in order to the construction or repair of any part of said road or roads, or their works or necessary buildings, the President and directors of said company, or their agents, or those contracting with them for working or repairing the same, may immediately take and use the same, they having first caused the

property wanted to be viewed by a jury (formed in the manner hereinbefore prescribed in those cases where the property is to be changed or altered by admixture with other substances, before such alteration is made), and that it shall not be necessary, after such view, in order to the use and occupation of the same, to wait the issue of the proceedings upon such view; and the inquest of the jury, after the payment or tender of such valuation, shall be a bar to all actions for taking and using such property, whether begun before or after such confirmation, or the payment of said valuation.

SEC. 18. That the President and directors shall have power to purchase, with the funds of said company, and place on any railroads constructed by them, under this act, all machines, wagons, vehicles, or carriages of any kind, which they may deem proper, for the purposes of transportation on said road; and that they shall have power to charge for tolls, and the transportation of persons, merchandise, and property of any kind whatever, transported along said railway, any sum not exceeding the following rates, to-wit: on all goods, merchandise, or property, for every one hundred pounds transported over twenty miles and under fifty miles, three and a half mills for each mile; and for persons, and every species of live stock, and every other description of freight and property, they shall charge no greater rate than is authorized to be charged on the railway from Lexington to Frankfort; that it shall not be lawful for any other company, or any other person or persons, to travel upon or use any of the roads of said company, or to transport persons or property thereon, without the license and permission of the President and directors thereof; and that the said road or roads, with all their woks, improvements, or profits, and all the carriages, vehicles, and machinery for transportation used therein, and all other species of property thereunto belonging, are hereby vested in said company incorporated by this act and their successors forever, and shall never be taxed beyond the rate of tax imposed upon real estate, estimated upon the prime cost of the proposed works; nor will the Legislature of this Commonwealth, for the space of thirty years, authorize any other railroad to be laid down on a parallel line with the one located by this company, extending from Louisville to the Ten-

nessee line, approaching nearer than ten miles; *Provided*, Full power is hereby reserved to this State to incorporate, hereafter, a company or companies to build a railroad or railroads, and that any and all such railroad or railroads, hereafter constructed, may connect and join with the road hereby contemplated; and full right and privilege is hereby reserved to the State, or individuals, or any company heretofore or hereafter incorporated by law of this State, to cross this road, provided any other railroad connecting with the road hereby provided for shall lead from the main route and diverge therefrom at an angle of twenty degrees or more; *Provided*, That in forming such connection, or in crossing said road, no injury be done to the works of the company hereby incorporated; and that nothing in this act shall be so construed as to deprive any subsequent Legislature of the power to authorize the "Kentucky and Mississippi Railroad Company" to extend their said road from Hopkinsville to Louisville, or of the power at any time hereafter of incorporating a company to construct a railroad from Louisville to some point upon the Mississippi River in this State.

SEC. 19. That the said President and directors shall, annually or semi-annually, declare and make such dividend as they may deem proper, of the net profits arising from the resources of said company after deducting the necessary current and probable contingent expenses; and that they shall divide the same among the stockholders of said company, in proportion to their respective shares.

SEC. 20. That if any person or persons shall wilfully, by any means whatsoever, injure, impair, or destroy any part of any railroads or road, constructed for said company, under this act, or any of their works, buildings, carriages, vehicles, or machinery, such person or persons shall, for every such offense, forfeit and pay to the said company a sum not exceeding five hundred dollars, recoverable in the name of said company, by an action of debt in the Circuit Court of the county wherein such offense shall be committed; and shall also be subject to indictment by the grand jury of said county, in said court, and upon conviction of such offense, be imprisoned in the jail thereof, and in the penitentiary, not less than six months nor more than four years, in the discretion of a jury.

SEC. 21. That so soon as the company shall have completed five miles of their route, they may commence and prosecute their business upon the terms and upon the stipulations herein provided, as though the whole work was completed.

SEC. 22. That the corporation of the city of Louisville, and the County Courts of the counties of Jefferson, Bullitt, Nelson, Larue, Barren, Allen, Green, Taylor, Hardin, Hart, Edmonson, Warren, and Simpson, and of any other counties through which this road may pass, a majority of all the members of the Board of Councilman of said city, and of the County Courts of said counties, concurring therein, be and they are hereby authorized to subscribe for and on behalf of said city and counties, as many shares in the capital stock of said railroad as to them may seem expedient, and to levy the sum so subscribed on the taxable property of said city or counties; and the better to ascertain the public sentiment of said city and counties in reference to the propriety of said subscriptions of stock herein authorized, said Board of Councilmen and County Courts are hereby authorized, if by them deemed expedient, in such manner as they may direct and prescribe, to submit the same to a vote of the qualified voters of said city and counties, respectively.

Approved March 5, 1850.

AN ACT to amend an act, entitled An Act to Charter the Louisville and Nashville Railroad Company, Approved March 5, 1850.

SECTION. 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the act recited in the title shall be so amended as to authorize any three or more of the persons named in the first section thereof to open books of subscription to the stock of said company, at such time and place as they may prescribe by an advertisement in one or more public newspapers printed in this State; and whenever one hundred thousand dollars, or more shall have been subscribed, they may pub-

lish the fact in like manner, and call a meeting of the stockholders, at such time and place as said publication shall designate, for the election of directors for said company, as authorized by the charter.

SEC. 2. That said company shall have power and authority to construct their road from the city of Louisville to any point or place in the direction of Nashville, Tennessee, and to connect the same with any railroad extending to Nashville, on such terms and conditions as the two companies may, from time to time, agree on, for the through transportation and travel of freight and passengers; and said company shall have the same power and authority to construct a branch of said road to the Mississippi River, and any other branch said company may desire, that the charter gives them to construct the main line, and with the same rights and privileges, and with the same duties and restrictions; and may for the main line and branches, acquire, as provided in the charter and by this amendment, the right of way one hundred and fifty feet wide, or more, if necessary; and the quantity of acres of land which they are authorized by the charter to acquire and hold, shall be exclusive of the right of way of the road and branches.

SEC. 3. That after said company shall be organized, by the election of directors and choice of a President and other officers, they may cause one or more routes for the main road, and any desired branch or branches, to be surveyed and estimated preparatory to location and the letting the work. But before proceeding to let the work, in whole or in part, the President and directors shall call a meeting of the stockholders and lay before them the cost of the road, as far as estimated, together with the amount of subscription obtained, and the right of way obtained, and the expenses incurred; and a majority of the stock in value shall have the right to order the expenses to be paid, and the subscriptions canceled, and the company to be dissolved; but they shall have no power to cancel the subscriptions and dissolve the company if two-thirds of the estimated costs, within this State, of the main line to Nashville shall have been subscribed to the stock of the company.

SEC. 4. That it shall be lawful for said company to apply to any Circuit or County Court of any county through which it may be proposed said road or any branch thereof shall pass, and for said court to appoint a competent engineer and two disinterested commissioners, any two of whom may act, to examine the proposed route of said road or branch, and to take from the proprietors of the land over which it is to pass a grant of the right of way, of such width as may be desired, and which may include the right to take stone, earth, gravel, or timber for the construction of said road; and they, jointly or severally, shall have the power and authority to take and certify, under their hands and seals, the acknowledgment of such grants in fee or right of way, and the separate acknowledgment of married women that the Clerks of the several County Courts have; and on the presentation of the grant and acknowledgment to the Clerk of the County Court where the land lies, it shall be the duty of the Clerk to record the same as other deeds; and they shall be effectual against all persons according to their tenor; *Provided*, That when the parties are infants, or absent, or refuse to make the grant, they shall hear any proof that may be adduced, and upon their own view proceed to value any land required for the right of way, taking into consideration the advantages and disadvantages the proposed road will be to the adjoining lands of such proprietor or lands required for turnouts and depot stations for said road, and also of earth, stone, gravel, or timber for the construction of said road, and report the value they shall have affixed, together with the evidence adduced, to the court appointing them, with a map or profile of the required ground; and said report may be filed with the Clerk of such court and a summons issued to the proprietors to show cause against the confirmation of said report; but if the proprietor shall be out of the Commonwealth the summons may be executed upon a known agent, if there be one in the county; and if there be no known agent in the county, then the court may order the appearance of the party at a named day and appoint the clerk to give the proprietor notice by letter; and in case of there being infant proprietors, the court shall appoint guardians *ad litem* for them, and cause the guardian to appear and act for them; and in case an absent defendant does not ap-

pear, the court shall appoint an attorney of the court to act for them. It shall be lawful for the company, or any proprietor, or for both, to traverse the report, and for the court to have the traverse tried in open court by a competent jury, on which trial the report and evidence, returned as aforesaid, shall be heard, together with such other proof as either party may produce. A new trial to the finding of the jury may be granted, as in other cases. The report shall stand for hearing, as to any proprietor, when the process has been executed ten days, or after the appearance of a proprietor on the day fixed for his appearance; and the court shall have jurisdiction to confirm the report, if no traverse is filed; and in case a traverse is filed, to have the same tried by jury, and to give judgment upon the report or finding of the jury and order the payment of the money, and the execution of the grant in accordance with the report, and to have the grant executed by a commissioner appointed by the court, and order them to be recorded in the County Clerk's office of the county; and either party may have an appeal or writ of error to the proceedings, but no appeal or writ of error by the proprietor shall stop the company from proceeding with the construction of the road.

SEC. 5. Said company shall allow to all subscribers and holders of stock under the company, interest on the same from the time of paying for said stock up to the time of making the first dividend, and issue to the holder stock therefor; and when stock shall be subscribed for a branch they may provide that said stock shall not be entitled to draw dividends until said branch is completed, but may allow interest on the payments up to the completion thereof, and pay it in stock.

SEC. 6. That the 22d section of the charter shall be so amended as to authorize the County Court of any county through which the road or any branch thereof may pass, to subscribe to the stock of said company in the name of the county, and also to pay the sum so subscribed, as in said section provided; but no such subscription shall be made until after such court shall have been petitioned, in writing, to make the same by a majority of the constitutionally qualified voters of such county, or until after said court shall have submitted the question of such sub-

scription to all the constitutionally qualified voters of such county and the proposition shall have received in favor of it a majority of all the votes cast.

SEC. 7. The 6th section of an act entitled "An Act to amend the charter of the Frankfort and Louisville Railroad Company," approved the 29th day of February, 1848, shall be in force as to all stock subscribed by any County Court in this company, and shall be, and is hereby, made applicable to such court and to the persons paying such tax, except that the interest shall only be drawn from the time of obtaining the certificate of stock, and which shall be issued to the tax-payer or his assigns in such manner as such County Court and said company may agree.

SEC. 8. Said company shall have the power in contracting for the construction of said road, or any part thereof, to pay one-third of the contract price in the bonds of the company, having not less than ten years to run, and bearing not more than six per cent. per annum interest, payable half-yearly, and interest and principal payable in some of the eastern cities, and to secure the same by deed of trust on said road, in all respects, as the Louisville and Frankfort Railroad Company are authorized to issue the bonds of the said company, and secure the same by a deed of trust on said road, under the acts to amend the charter of the Louisville and Frankfort Railroad Company, approved the 23d day of February, 1849, and 4th of March, 1850; said company shall have full power and authority to issue the bonds of said company to an amount not exceeding eight hundred thousand dollars, in sums not exceeding one thousand dollars, and bearing an interest not exceeding six per cent. per annum, payable half-yearly in some of the eastern cities, and secure the same by a deed of trust upon said road, as provided in the above recited amendments to the Louisville and Frankfort Railroad Company, and to sell said bonds as the Louisville and Frankfort Railroad Company is authorized to sell the bonds of said company, and to apply the proceeds to the completion of said road or any of its branches.

Approved March 20, 1851.

CHAPTER XXIII.

AN ACT to incorporate the Louisville and Nashville Railroad Company.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the right of way for the construction of a railroad from the line between the States of Kentucky and Tennessee, so as to connect the cities of Louisville and Nashville by railroad communication, be and is hereby granted to the Louisville and Nashville Railroad Company, incorporated by the Legislature of Kentucky, with all the rights, powers, and privileges, and subject to all the restrictions and liabilities set forth and prescribed in a charter granted to said company by the Legislature of Kentucky, and approved March the 5th, 1850, and the amendments thereto, passed by said Legislature and approved March the 20th, 1851, for the term of nine hundred and ninety-nine years, except as further provided in this act.

SEC. 2. *Be it further enacted*, That said company shall construct said railroad from the boundary line between said States, beginning at said line where it shall be intersected by that part of said railroad, which is to be within the State of Kentucky, to (a point within or convenient to) the city of Nashville; *Provided*, That in the construction of said railroad, said company shall commence at each end of the line at the same time, and continue the work from each end until said railroad is completed; *Provided further*, That said company shall not be compelled to use the capital stock subscribed and paid in by the citizens, companies, corporations, or counties in the State of Kentucky, in the construction of that part of said railroad lying in the State of Tennessee, until the part therof lying in Kentucky is completed.

SEC. 3. *Be it further enacted*, That so soon as said company shall have completed five miles of said railroad from Nashville, they may commence and prosecute their business, as provided in the twenty-first section of said charter. That the tariff of charges for the transportation of passengers, and for goods, wares, merchandise and other articles and commodities, shall be equal on all parts of said railroad in proportion to distance, and that equal facilities for the transportation of the same in either direction shall be furnished.

SEC. 4. *Be it further enacted*, That the stockholders in the State of Tennessee shall be entitled to be represented in said company by directors residing in Tennessee, in proportion to their stock, to be chosen by the stockholders of the company in the manner and at the time the other directors are chosen.

SEC. 5. *Be it further enacted*, That nothing in this act, or in said charter or amendments thereto, shall be so construed as to prohibit the Legislature of Tennessee from passing any law authorizing the construction of railroads within this State parallel to, crossing or to unite with said railroad from Louisville to Nashville, and the State of Tennessee reserves the right so to do.

SEC. 6. *Be it further enacted*, That the twentieth section of said charter, and the fourth section of the amendments thereto, shall be void and of no force or effect within this State.

SEC. 7. *And be it further enacted*, That the 23d, 24th, 25th and 29th sections of the act of the 11th December, 1845, incorporating the Nashville and Chattanooga Railroad Company, be and are hereby made a part of the said charter of the Louisville and Nashville Railroad Company, to be in force within this State, and that this bill shall take effect from and after its passage; *Provided*, That the Commonwealth of Kentucky shall grant to the State of Tennessee, or to such companies as the General Assembly may charter, the right of way from Nashville to intersect with the Lexington and Danville Railroad, or Danville, Harrodsburg, or such other point on that road as the company may designate (provided it does not interfere with any vested rights of the citizens of Kentucky), with the like powers and privileges granted to this company.

SEC. 8. *Be it further enacted*, That the company shall bring said railway to the city of Nashville, or South Nashville, and locate their depot convenient to the Nashville and Chattanooga Railroad, so as to form the connection.

JORDAN STOKES,
Speaker of the House of Representatives.

M. R HILL,
Speaker of the Senate.

Passed December 4, 1851.

SEC. 23. The said company may purchase, have and hold any bridge or turnpike road over which it may be necessary to carry the said railroad; and when such purchase is made, to hold the said bridge or turnpike road on the same terms, and with all rights which belong to the individual, individuals, or corporation from which such purchase may be made; *Provided*, That the said company shall not obstruct any public road without constructing another as convenient as may be.

SEC. 24. Where any lands or right of way may be required by the said company for the purpose of constructing their road, and for want of agreement as to the value thereof, or from any other cause, the same cannot be purchased from the owner or owners, the same may be taken at a valuation to be made by five commissioners, or a majority of them, to be appointed by the Circuit Court of the county where some part of the land or right of way is situated, and the said commissioners, before they act, shall severally take an oath before some Justice of the Peace, faithfully and impartially to discharge the duty assigned them. In making the said valuation, the commissioners shall take into consideration the loss or damage which may occur to the owner or owners in consequence of the land being taken or the right of way surrendered, and also the benefit and advantage he, she or they may receive from the erection or establishment of the railroad or works, and shall state particularly the nature and amount of each, and the excess of loss and damage over and above the benefit and advantage shall form the measure of valuation of the said land or right of way. The proceedings of the said commissioners, accompanied with a full description of the said land or right of way, shall be returned, under the hands and seals of a majority of the commissioners to the court from which the commission issued, there to remain of record. In case either party to the proceedings shall appeal from the valuation to the next session of the court granting the commission, and give reasonable notice to the opposite party of such appeal, the court shall order a new valuation to be made by a jury, who

shall be charged therewith in the same term, or as soon as practicable, and their verdict shall be final and conclusive between the parties, unless a new trial shall be granted; and the lands or right of way, so valued by the commissioners or jury, shall vest in the said company a fee-simple, so soon as the valuation may be paid, or when refused, may be tendered. Where there may be an appeal, as aforesaid, from the valuation of commissioners by either of the parties, the same shall not prevent the works intending to be constructed from proceeding; but where the appeal is by the company requiring the surrender, they shall be at liberty to proceed in their works only on condition of giving to the opposite party a bond, with good security, to be approved of by the Clerk of the court where the valuation is returned, in a penalty equal to double the said valuation, conditioned for the payment of said valuation and interest, in case the same be sustained; and in case it be reversed, for the payment of the valuation thereafter to be made by the jury and confirmed by the court; *Provided*, That when the land cannot be had by gift or purchase, the operations of the work are not to be hindered or delayed during the pendency of any proceeding to assess its value as aforesaid; nor shall any injunction or supersedeas be awarded by any judge or court to delay the progress of said work.

Sec. 25. In the absence of any contract with the said company in relation to lands through which the said road may pass, signed by the owner thereof, or by his agent, or any claimant or person in possession thereof, which may be confirmed by the owner, it shall be presumed that the land upon which the said road may be constructed, together with a space of one hundred feet on each side of the centre of said road, has been granted to the company by the owner thereof, and the said company shall have good right and title thereto, and shall have, hold, and enjoy the same as long as the same be used only for the purposes of the road, and no longer, unless the person or persons owning the said land at the time that part of the road which may be on said land was finished, or those claiming under him, her or them shall apply for an assessment for the value of the said lands, as herein before directed, within five years next after that part of said road was finished. And in case the said owner or

owners, or those claiming under him, her or them shall not apply for such assessment within five years next after the said part was finished, he, she or they shall be forever barred from recovering the said land, or having any assessment or compensation therefor; *Provided*, Nothing herein contained shall affect the right of *femes covert* or infants until two years after the removal of their respective disabilities.

SEC. 29. The said company shall have the right to take, at the store-houses they may establish or annex to their railroad, all goods, wares, merchandise, and produce intended for transportation, prescribe the rules of priority, and charge and receive such just and reasonable compensation for storage as they, by rules, may establish (which they shall cause to be published), or as may be fixed by agreement with the owner, which may be distinct from the rates of transportation; *Provided*, That the said company shall not charge or receive storage on goods, wares, merchandise, or produce which may be delivered to them at their regular depositories for immediate transportation, and which the company may have the power of transporting immediately.

CHAPTER XVIII.

AN ACT to amend an act passed February 29th, 1856, entitled, "An act to amend the Charter of the Nashville and Cincinnati Railroad Company," and the acts amendatory thereto, and for other purposes.

WHEREAS, It appears that the first section of thirty miles of the Edgefield and Kentucky Railroad route includes, and runs over what is known as the Cumberland Ridge, a very difficult and laborious point to overcome by railway, requiring at least four times the amount of work and expenditure of means as would be necessary to prepare and make ready for the reception of cross-ties and rails of any equal average distance upon said section of thirty miles; and, whereas, in consideration of this obstacle, by the above cited act, the Legislature gave said com-

pany the privilege of grading their road to the southern foot of said ridge, and there to pass upon the north side thereof and grade a sufficient number of consecutive miles to make thirty miles with that portion upon the south side of said ridge; and, whereas, the required number of consecutive miles upon the north side of said ridge just crosses a large stream, rendering it necessary to build a bridge and to cut down the northern bank of said stream and carry the excavated dirt and rock further on, in order to make a *fill*, which will require the building of an additional mile or more of said road. Hence the difficulty intended to be removed by the Legislature was not accomplished, but another equally onerous burthen unintentionally imposed; and, whereas, it further appears that said company have already performed considerable work upon said ridge section, estimated to be more than double the amount necessary to complete the grading of an average section of equal distance of the first thirty miles of said road, and that there has been done upon the entire thirty miles work sufficient to grade and prepare for the ties and iron any section of thirty miles running from the city of Nashville, not crossing said ridge. And to require said company to either cross said ridge or stream with their road, before they were entitled to State aid, is more than ought to be exacted under the circumstances and as was contemplated under former legislation. And, whereas, it further appears that said company have already expended a fraction over two hundred thousand dollars in the grading of said road; therefore,

Section 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the fifth section of an act passed February 29th, 1856, entitled, "An act to amend the charter of the Nashville and Cincinnati Railroad Company, and the acts amendatory thereto, and for other purposes," be so amended as to entitle the Edgefield and Kentucky Railroad Company to all the privileges of the act of February 11th, 1852, entitled, "An act to establish a system of Internal Improvements in this State," and the acts amendatory thereto, whenever they shall have prepared their road (excepting the ridge section) for iron rails to the distance of thirty miles from its Nashville terminus, including said ridge section in the estimate of distance; *Provided*, It shall

be made to appear to the satisfaction of the Road Commissioner before said aid is granted, that as much work has been done on said ridge section as would be necessary to complete the grade of an average section of equal distance of said road, and that the cost and labor of construction from Nashville to the terminus of the first thirty miles are as much as would be required to grade the same distance of road over an ordinary country, leaving out the amount of unfinished grading on the ridge section at the time of the completion of the balance of the first thirty miles of said road, all of which he shall certify to the Governor in his certificate; and,

WHEREAS, The Louisville and Nashville Railroad Company have expended on the forty five and one-half miles in the State of Tennessee, besides the bridge at Nashville across Cumberland River, the sum of $..... and the work on the first thirty miles of said road has so far progressed as to give satisfactory evidence that on the 10th day of January, 1858, there will not remain more than fractional parts of three miles unfinished for track, and those parts completed by the first day of March, 1858, and said company have finished, ready for the iron rails, a number of miles, though not consecutive, equal to thirty, and have worked one tunnel through, and another half through; therefore,

SEC. 2. *Be it enacted by the General Assembly of the State of Tennessee*, That upon the report of the Railroad Commissioner to the Governor, that the Louisville and Nashville Railroad have graded and bridged ready for the track thirty miles of road, though not consecutive, and that said company have done work on that part of the road beyond the thirty miles equal in value to five times the amount of the work then to be done on the first thirty miles, not counting work on any mile, above the said first thirty, which has been calculated in the aforesaid thirty miles, then the Governor shall issue, on the demand of the President of said road, coupon bonds of the State of Tenness to the amount of ten thousand dollars per mile.

SEC. 3. *Be it further enacted*, That the benefits and provisions of an act passed February 11th, 1852, entitled, An act to establish a system of Internal Improvements in this State, and the acts

amendatory thereto, be extended to the Louisville and Nashville Railroad Company, until the first day of June, 1858.

SEC. 4. *Be it further enacted*, That the said road is hereby allowed until the first day of June, 1859, to comply with the provisions of said act of February 11th, 1852, and the act amendatory thereto, on that part of said road lying from the end of the first thirty miles to the Kentucky line.

SEC. 5. *Be it further enacted*, That the Board of Directors of the Louisville and Nashville Railroad Company be and they are hereby vested with the power to elect one or more Vice-Presidents, one of whom shall reside in the State of Tennessee, who, together with the directors residing in the State of Tennessee, may be constituted a local board, and to whose management may be submitted the construction of that part of the road which lies in the State of Tennessee, subject to the control of the President and directors of the Louisville and Nashville Railroad Company, and exercise such other and further powers as the board may from time to time confer. The Board of Directors of the Louisville and Nashville Railroad Company shall prescribe the duties and define the powers of the Vice-President. The Board of Directors of the Louisville and Nashville Railroad Company shall have power to fix the salary of the Vice-President in Tennessee, and the Vice-President in Tennessee may be elected from or outside of the local board.

SEC. 6. *Be it further enacted*, That the iron for said two roads shall be shipped to the order of the Railroad Commissioner, who shall deliver it to them as above provided for.

SEC. 7. *Be it further enacted*, That this act shall take effect from and after its passage.

DANIEL S. DONELSON,
Speaker of the House of Representatives.

JOHN C BURCH,
Speaker of the Senate.

Passed December 15, 1857.

CHAPTER LXII.

AN ACT to amend the charter of the Louisville and Nashville Railroad Company, passed the 4th December, 1851.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the first proviso to the second section of an act passed the 4th day of December, 1851, entitled "An act to incorporate the Louisville and Nashville Railroad Company," be so amended that said company shall not be required to commence and prosecute the work upon each end of the line of said road at the same time, but may begin the work at any point upon said line which they may think will best promote the interest of the stockholders.

SEC. 2 *Be it enacted*, That the proviso to the seventh section of said act be, and the same is hereby, repealed.

SEC. 3. *Be it further enacted*, That the eighth section of said act be, and the same is hereby, repealed.

JORDAN STOKES,
Speaker of the House of Representatives.

M. R HILL,
Speaker of the Senate.

Passed January 10, 1852.

CHAPTER CCXXVII.

AN ACT to amend an act entitled An act to charter the Louisville and Nashville Railroad Company, and the several acts amending said act, passed by the Legislatures of Kentucky and Tennessee.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the Louisville and Nashville Railroad Company are hereby vested with the right to issue and to sell and deliver by the President, or any regularly constituted agent by the President, within the United States, or elsewhere, the bonds of said company, signed by the President and countersigned by the Secretary of said company, with the seal of the corporation

affixed, to an amount not exceeding three millions of dollars, bearing interest at a rate per annum not exceeding seven per cent., payable semi-annually, with coupons attached, signed by the Secretary of the company, to be made payable, as said company may direct, in any city in the United States, or elsewhere, within thirty years from their respective dates. To secure the prompt payment of the interest and principal of the bonds issued by authority of this act, said company may execute a mortgage or deed of trust, appointing a trustee or trustees, and from time to time fill vacancies that may occur, for the use and to secure all the holders of such bonds, with such covenants and stipulations as may be necessary to effect the purpose and objects of its execution; *Provided, however*, If said company shall receive the aid of the State of Tennessee to purchase iron, &c., the lien created by the act extending such aid, shall be superior and paramount to any lien created by the company on that part of the road lying within the State of Tennessee, and that no part of the money hereby authorized to be raised by the issuance of its bonds, shall be used by said company in the construction of any branch road, nor for any other purpose other than that of the construction and equipment of the main stem of said road connecting the city of Louisville with the city of Nashville. *Provided, however*, That the bonds and mortgage hereby authorized, shall not be enforced in Tennessee at a greater rate of interest than six per centum per annum, unless a rate equal to seven per cent. at the time of its enforcement is allowed by the law of Tennessee.

SEC. 2. *Be it enacted*, That if the mortgage, or deed of trust, shall at any time be foreclosed, according to its terms, or by legal proceedings, such foreclosure shall be for the benefit of all the holders of bonds issued and secured by its provisions. Upon such foreclosure, the President shall make a perfect list of all bonds issued and secured by it, verified by its affidavit, and placed of record on file, in the Chancery Court in the city of Louisville, where only such proceeding is authorized to be had. Nor shall such foreclosure take place sooner than ninety days after publication in one or more newspapers printed and published in the cities of Nashville, Louisville, and New York. The person or persons, firm or firms, corporation or corporations,

that may become the owners or lessees, for the time, by reason of any sale or leasing, to satisfy the demands of the bondholders, shall be, and are hereby, vested with all the rights, privileges, franchises, and immunities of the corporation.

SEC. 3. *Be it enacted*, That to create and secure a fund for the final redemption of the bonds authorized by this act, the bonds of the State of Tennessee, if delivered to the company, and the bonds of the several counties which have or may be received in payment of capital stock subscribed by the counties, a sinking fund shall be created by said company. All dividends over six, and inclusive of eight per cent., shall be set apart and passed to the credit of the sinking fund, and held sacred to the purpose aforesaid, together with any other sum which may, by order of the board, pass into the sinking fund. To increase and make available the funds set apart as a sinking fund, and any other funds the company may from time to time have on hand, said company may establish offices, or create agencies to use and employ the same, by loaning and reloaning the same; *Provided, however*, That the profit declared on the stock of the city of Louisville, and the respective counties, shall only be held subject to the order of the board by the consent of the General Council of the city, and the respective County Courts. Said railroad company shall also have the right to retire their mortgage bonds, by issuing stock in said company to the holders of bonds at par at any time. The holders of the bonds, at their election, may demand, and on such demand shall receive, certificates of stock in lieu of bonds, at dollar for dollar, at any time within seven years after there is a through run of the cars from Louisville to a point within the city of Nashville. The mortgaged bonds issued by authority of this act, whether delivered in the United States or elsewhere, shall not be avoided in whole or in part, by pleas of usury, by reason of the rate of interest, place of delivery, or a sale at less than their nominal value.

SEC. 4. *Be it enacted*, That the railroad company may guarantee the payment of the interest and principal of all or any part of the bonds of the several counties which have been or may be delivered in payment of stock, by an indorsement on each

bond so guaranteed, the following words: "The Louisville and Nashville Railroad Company guarantee the payment of the interest and principal of the within bond." To be signed by the President, countersigned by the Secretary, and the seal of the corporation affixed. Counties, towns, cities, and other corporations that have or may subscribe for stock, and pay the same in bonds, may, under the provisions of laws of their respective States, retire the bonds issued by them and delivered in payment of stock by the transfer of the county or corporation stock made by the proper authority; or may, by indorsement in these words: "Convertible into stock at the election of the holder in five years after a through run of the cars from Louisville to a point within the city of Nashville." To be signed by the Mayor of cities, and Clerks of County Courts. On such transfer being made, the railroad company shall cancel so much of the stock of the county, or city, or corporation, and issue the same to the holders of such transfers, or convertible bonds. The bonds, when surrendered, shall be canceled.

SEC. 5. *Be it enacted*, That the tax-payers in the county of Davidson, in the State of Tennessee, shall be entitled to stock in said company for sums paid by them to liquidate the interest on the bonds of said counties, paid in discharge of stock subscribed, up to the time the company shall declare dividends, and not after (unless the County Court of said county, or the persons having charge by law of said dividends, shall consent and apply said dividends to the payment of the interest on said bonds). The separate tax-receipt of the collecting officer, exhibiting the amount so paid, shall be transferable by indorsement, and the amount of one hundred dollars shall entitle the holder to one share of stock; but such stock shall not bear interest. The County Court of said county shall, from time to time, appoint a fit and competent person, and enter the same on record, to whom all tax-receipts and transfers shall be exhibited and surrendered; and upon their surrender, the person so appointed shall issue to the holder a printed certificate of the number of shares of stock to which the holder is entitled, and a certificate of any amount over an even share which may also pass by indorsement, and be added to tax-receipts to

entitle the holder to a certificate of stock. The holders of certificates of stock shall, after one month from their date, on presentation at the office of said company in Louisville, receive a certificate of stock. It shall be the duty of the persons so appointed to keep a list of all persons to whom they issued certificates, and at the end of each month transmit a copy to the Secretary of the company at Louisville. They shall also file all receipts so surrendered, and deliver them to the agent of the company, to be kept on file in the office of the company. The compensation of such persons shall be fixed by the County Court, and paid by the county or the persons asking the certificates of stock. The persons so appointed, before entering on the discharge of their duties, shall take an oath faithfully to perform the duties devolved upon him by such appointment.

SEC. 6. *Be it enacted*, That said railroad company may, at any time and place in the United States or elsewhere, without the formality of opening books for public subscriptions, or appointing commissioners for that purpose, receive subscriptions of stock to their company tendered by individuals, towns, cities, counties, or other corporations, whether payable in money or other things; with such terms and time of payment, conditions annexed, and kind of payment, that may be set forth in the subscription; and when the stock so subscribed is earned or paid for, certificates thereof shall be issued to those entitled to it. Said company may also contract to pay in the capital stock of the company for anything necessary in the prosecution of the work of construction, or to pay any debt of the company; and may sell, convey and deliver any property received for stock, or mortgage or pledge the same. Said company may purchase and hold or hire slaves for use in the construction or management of the road, but not for traffic. When no longer wanted for the purpose aforesaid, they may be sold or hired in the States of Tennessee or Kentucky.

SEC. 7. *Be it enacted*, That it shall be the duty of the President and each director of the said company, and each engineer or other agent engaged in the service of the company, to take an oath, each for himself, that he is not, and will not, during

his continuance in office, become interested, directly or indirectly, in any contract for the building or the furnishing any material to build said road, made by the company with any person. The engineers shall also swear that they will well and truly, to the best of their skill and judgment, make a fair, impartial, and correct estimate of work done and materials furnished, according to contract, and otherwise faithfully perform the duties of engineer so long as they continue in the service of said company. A certificate of such oath, taken before an officer authorized by law to administer oaths, shall he recorded on the minute book of the company.

SEC. 8. *Be it enacted*, That if, on judicial proceeding and judgment of any court of competent jurisdiction, it shall be adjudged that any engineer, or any of the officers or other agents aforesaid, shall, at any time after taking said oath, have been interested with any contractor in any contract for the building of any part of said road, or for furnishing any materials for building or equipping said road, no recovery in law shall be had on such contract; and said interested engineer or officer aforesaid, shall be deemed guilty of the crime of perjury, and upon conviction thereof, shall suffer all the penalties prescribed for the crime of perjury.

SEC. 9. *Be it enacted*, That full and complete powers are hereby given to the Louisville and Nashville Railroad Company, to the Edgefield and Kentucky Railroad Company, and to any and all railroad companies now chartered, or which may be hereafter chartered by the State of Tennessee, to unite in the purchase of the necessary grounds, right of way, or other privileges necessary for, and to unite upon such terms as may be agreed on in the construction of a common bridge across the Cumberland River, and in the erection of any buildings and fixtures useful for the convenient transfer of passengers and freight from one road to another.

SEC. 10. *Be it enacted*, That within the space of two years from and after the passage of this act, the said Louisville and Nashville Railroad shall have completed, equipped, and in operation, not less than thirty miles of its said road next the city of Nashville, including the bridge across Cumberland River,

unless prevented or obstructed by unavoidable occurrences or hindrance; *Provided*, That none of the funds or resources belonging to said road, raised or to be raised for the building of the road proper, shall be applied to the building of said bridge, but that said bridge is to be built exclusively from means appropriated, or to be appropriated to that object; and that the thirty miles on this section mentioned, is to include said bridge only on the condition of adequate means being furnished for that object.

SEC. 11. *Be it enacted*, That the Edgefield and Kentucky Railroad, and the Louisville and Nashville Railroad, are entitled to the sum of one hundred thousand dollars each, to construct a bridge across the Cumberland River at Nashville; and that they are hereby consolidated for that purpose, and shall be entitled, upon application, to the sum of two hundred thousand dollars, for which the Governor shall issue coupon bonds of the State at six per cent., at thirty years, to be issued as twenty thousand dollars of the work shall be done from time to time.

SEC. 12. *Be it further enacted*, That the power is hereby vested in the Louisville and Nashville Railroad Company, and the Edgefield and Kentucky Railroad Company, to enter into an agreement to construct a road, to be held and used in common, with single or double track, from the city of Nashville to a point to be agreed on, not to exceed ten miles; and said companies shall each be entitled to State aid, under the provisions of the act passed 11th February, 1852, entitled "An act to establish a system of internal improvements in this State," and an act passed 8th February, 1854, entitled "An act to amend an act passed 11th February, 1853, entitled An act to establish a system of internal improvements in this State," in as full and complete a manner as if each road had been separately constructed. But it shall be the duty of said companies to construct a double track for the distance they run together, within four years from the time the cars commence running on said road, and may agree on terms of separating their interests.

SEC. 13. *Be it enacted*, That this act shall take effect from and after its passage; *Provided*, That nothing herein contained shall be construed to prevent the Louisville and Nashville Rail-

road from admitting branch roads to connect with it at any point or points to be agreed upon between said company and those who have or may subscribe stock for the construction of any branch road. The stock subscribed, and the means created to construct each separate branch, and shall be faithfully applied to that purpose. And said company is hereby vested with the power and the right to issue its bonds, under the provisions of this act to obtain means to construct and equip any branch road, the bonds to express on their face the purpose for which they were executed, and, to secure their payment, may execute a deed of trust or mortgage, and for the payment of which the rights, credits, profits, property, and franchise procured for said branch, by the use of its means, shall alone be made liable. The rights, credit, property, or profits of the main stem shall not be used to create means to construct, or made liable for, any debt or liability created to construct branch roads, nor shall the rights, credit, property, and profits of any branch road be used to create means to construct, or made liable for, any debt or liability created to build the main stem. And with a view to such liabilities and profits, said company shall keep separate accounts, exhibiting the stock, property, profits, and debts of the main road and each branch.

SEC. 14. *Be it enacted*, That upon the acceptance by said company of the benefit of the act of Tennessee extending to said company aid in the purchase of iron, &c., two directors shall be added to the number allowed by the original charter, who shall be in office from the time of their appointment by the Governor, and remain in office one year, and until their successors are appointed and qualified. The directors so appointed shall represent the State of Tennessee to an amount in shares equal to a subscription of five hundred and forty-five thousand dollars, at all meetings of the stockholders, and in the sittings of the Board of Directors, and either may vote for the other, and both or either may, in writing, vote by proxy; and in like manner may any other director, residing in Tennessee, vote in person or by proxy; *Provided, however*, If anything shall occur to prevent the company from receiving the State aid, said State directors shall only represent the State to the extent that the company may realize State aid.

SEC. 15. *Be it further enacted*, That the Louisville and Nashville Railroad Company be and they are hereby authorized and vested with the power to make an agreement with any County Court of counties which has subscribed stock in said road, payable in bonds, whereby such counties may, through the County Courts, acting under authority of law, conferring the power to contract, agree to reduce the amount of their stock, and covenant to pay the same in money at a shorter period, and secure the same by the execution of bonds, maturing at an earlier date and of less denomination, and transfer the stock of said County Courts to the tax-payers of the respective counties.

SEC. 16. *Be it enacted*, That upon the presentation of tax receipts for taxes paid in Sumner County, to an amount equal to one or more shares, countersigned by the Clerk of the County Court of Sumner County, as now required by law, said company shall issue certificates of stock in said company to said tax-payers or their assignees, such stock not to bear interest.

NEILL S. BROWN,
Speaker of the House of Representatives.

EDWARD S. CHEATHAM,
Speaker of the Senate.

Passed December 15, 1855.

CHAPTER CLXIII.

AN ACT to amend the charter, and several acts amendatory thereto, passed by the Legislatures of Tennessee and Kentucky, incorporating a Company to construct a Railroad from the city of Louisville to the city of Nashville.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the several acts of the General Assembly of the States of Tennessee and Kentucky be, and are hereby, amended by the additional sections.

SEC. 2. That the Louisville and Nashville Railroad Company is hereby authorized to issue, from time to time, income bonds,

pledging the receipts of said road, in amount not to exceed one million five hundred thousand dollars in the aggregate. Said bonds to be made payable at such time and place as the President and directors of said company may direct, and bear a rate of interest not exceeding eight per cent. per annum, with interest coupons attached; they shall bear the signature of the President, and be countersigned by the Secretary; the coupons to be signed by the Secretary, the seal of the corporation to be affixed; *Provided, however*, said bonds, nor any mortgage made to secure them, shall be enforced in the State of Tennessee, at a higher rate of interest than six per cent. per annum, unless at the time of enforcement the laws of Tennessee allow a higher rate; then for such rate as allowed by law, but may be enforced in Kentucky. The bonds hereby authorized to contain on their face a pledge of the income of said company from the main road, after the payment of charges for running and the necessary repairs; they or the proceeds of sales shall be used in the purchase of iron, chairs, and spikes, cross-ties, the laying of track and equipment for business, and for the purpose of construction as hereinafter prescribed on the main road, and no other. It shall be deemed malfeasance in office in such members of the board as shall authorize any other use, and any stockholder or bondholder shall have the right to arrest by petition or affidavit, such improper application. The bonds hereby authorized shall not be held to be cumulative, but as a part of the sum authorized under an act which passed the Legislatures of Tennessee and Kentucky at their sessions of 1855.

SEC. 3. *Be it further enacted*, That the bonds hereby authorized to be issued shall be made payable to the bearer, and pass by delivery; and to secure the prompt payment of the interest and principal, said company, by their President, may make and execute a mortgage to two trustees, to be named therein, for the benefit of the holders of said bonds, and provide for a succession of trustees in case of death, removal, or refusal to act. It shall to all intents and purposes pass the property recited, and privileges and franchises to the trustees, for the use of the holders of bonds herein provided to be issued, and such others as it purports to secure, together with the earnings of said road, after the payment of the expenses of running and repairs.

This act shall not be construed to effect, nor shall any mortgage, executed by its provisions, impair or in any way affect, change or weaken the lien of the State of Tennessee on that part lying within that State, created by the statutes of the State on the conferring and accepting State aid by said company. But it shall be the duty of the President and trustees to make a faithful application of the earnings of said road to pay the interest as the same falls due on the bonds of the State, received by said company.

SEC. 4. *Be it further enacted*, That it shall be the duty of the President and directors of said company to cause to be set apart and held sacred as a sinking fund, such per cent. of the earnings of said road, after paying charges for running, repairs, and incidental expenses in the operations of said road, a per cent. equal to the payment of interest on the bonds, and be sufficient to redeem each class of bonds as they respectively fall due; the setting apart of such fund shall, however, in no event have preference over the rights of the State, as given by former legislation in reference to the income of said road. When any of said bonds shall fall due, said company may make proclamation through one or more of the newspapers published in the cities of Louisville, Nashville, and Bowling Green, of its readiness to pay on a day, and at the place of payment, and if the bonds so advertised and designated are not presented for payment, the interest shall cease from that time until presented and payment refused.

SEC. 5. *Be it further enacted*, If said company shall fail to make payment of the interest as the same shall fall due, the holders of said bonds may proceed by petition, filed on affidavit in the Chancery Court in the city of Louisville, Nashville, or Bowling Green, after notice to the President; and on hearing, the Court shall make such order or decree in the premises as may be deemed necessary and sufficient to enforce and secure the performance of the trust, which order shall be for the benefit of all the bondholders to whom said company may be in default. That the holders of bonds due and unpaid, with accumulated interest in the aggregate amount of fifty thousand dollars, shall have the right to file their bill or petition, and ask

a foreclosure and sale of the mortgaged property. Upon the filing of such proceeding, it shall be the duty of the President to cause a perfect list of all bonds secured by said mortgage, and place them on file in said suit; when it shall be the duty of the Court to make publication of the fact of the filing said bill, in papers published in New York, Louisville, and Nashville, ninety days by successive weekly insertions, before rendering a decree, and on hearing, such decree shall be rendered, as will be equitable among all the holders of the bonds on sale or purchase, or order of lease, the person or persons, corporation or corporations, that may become the owners or lessees under such decree or order, shall and are hereby declared to be substituted to, and vested with, all the rights, privileges, franchises, and immunities of said corporation, in the property sold or leased, as well that part in Tennessee as in Kentucky, but the right in Tennessee shall only attach and be continuous on the payment, at the proper time and place, the interest on the bonds of the State of Tennessee, received by said company, the sinking fund, and the bonds themselves as they fall due. That the holders of the bonds issued under this or any other act, authorizing the issuance of bonds, shall, at their option, have the right, at any time, to convert said bonds into the stock of the company at dollar for dollar. The company is vested with the power, by the consent of the holders of bonds, to agree on terms by which the stock of the company may be issued to bondholders in payment thereof. That the issue of the bonds herein authorized shall be conclusive evidence of the acceptance of the company of this as an amendment of their charter, and as evidence that all the requirements of the act have been complied with.

Sec. 6. *Be it further enacted*, That, whereas, the funds necessary for ironing and equipping the line of the Louisville and Nashville Railroad, in the State of Tennessee, are furnished by the State aid heretofore granted and accepted by said company; and, whereas, it is but just and right that the line of the road in Tennessee shall receive its fair proportion of the proceeds of the income bonds raised by virtue of this act, the authority hereby conferred is subject to this provision, that so much at least of the proceeds of said income bonds shall be applied to the construction of the road-bed and cross-ties in the State of

Tennessee as will give the line of the road in the State its fair proportion as above, if the same should be needed to prepare such for the iron.

SEC. 7. *Be it further enacted*, That to carry out the preceding section, that the amount so appropriated to the line of the road in this State shall be in proportion to the entire amount at any one time raised by said income bonds, as the length of the line of the road in Tennessee is to the length of the entire road. That it shall be deemed malfeasance in office, as provided in section second of this act, in such members of the Board of Directors of the Louisville and Nashville Railroad Company as shall authorize any use of the proceeds of such bonds, inconsistent with the foregoing provisions.

SEC. 8. *Be it further enacted*, That the time for the construction of the bridge across the Cumberland River, as specified in the act of the General Assembly, passed the 15th December, 1855, be extended to the Louisville and Nashville Railroad Company for twelve months, from and after the passage of this act; and that said company is hereby vested with the right to contract with the General Government for the transportation of the mails, and is hereby declared capable in law to receive and hold any grant or appropriation made by Congress as compensation for public service.

SEC. 9. *Be it further enacted*, That the power to acquire land for railway track, and necessary side tracks, and the requisite quantity for depot, freight and passenger houses, within the corporate limits of the city of Nashville, which by law are conferred on the Nashville and Chattanooga Railroad Company, be and is hereby vested in the Louisville and Nashville Railroad Company, and the Edgefield and Kentucky Railroad Company, and may be enforced by said companies, jointly or separately, for their joint or several use.

SEC. 10. *Be it further enacted*, That nothing in this act shall be so construed, as to give banking privileges to the company of any character whatever, or so as to increase the liability of the State to said company. That this act take effect from and after its passage.

SEC. 11. *Be it further enacted*, That the same powers and privileges be extended to the Edgefield and Kentucky, and Nashville and Henderson Railroad Companies; *Provided*, The same is accepted by a majority of directors of each company.

SEC. 12. *Be it further enacted*, That so soon as the Louisville and Nashville Railroad Company shall have graded their said road from the termination of the first thirty miles from Nashville to the Kentucky line, prepared to receive the iron rails, then the Governor of the State shall issue the bonds of the State to said company agreeably to the act of 1852, and acts amendatory thereto.

SEC. 13. *Be it further enacted*, That the East Tennessee and Virginia Railroad Company, be, and is hereby authorized and empowered to establish an express agency, and shall receive such additional compensation as is usually charged for transportation of freight by other express companies.

SEC. 14. *Be it further enacted*, That it shall be lawful for any Sheriff, Coroner or Constable to levy upon and sell, as other personal property, any share or shares in any railroad or turnpike company in this State, belonging to any execution debtor or corporation, against whom they hold an execution.

SEC. 15. *Be it further enacted*, That the officer making the levy, shall, at the time of such levy, or as soon thereafter as practicable, notify the Secretary or other officer entrusted with the books of the turnpike or railroad company of the fact of such levy; the notice to be given personally or in writing, left at the office of the Secretary, or other officer aforesaid.

SEC. 16. *Be it further enacted*, That upon the sale of such turnpike or railroad stocks in shares, by execution, the officer, on receiving from the purchaser the amount of his bid, shall execute and deliver to him a certificate of the shares sold, and his return of the sale, on the back of the execution, shall be notice to all the world of the fact of sale; and on presenting to the proper officer of the company, said certificate, said officer shall transfer said shares on the proper books to the purchaser or his assigns.

SEC. 17. *Be it further enacted*, That the Tullahoma and Southern Railroad Company have the further time of two years to commence and finish their railroad; *Provided*, No State aid be granted to said road.

SEC. 18. *Be it further enacted*, That the further time of five years is hereby extended to the Nashville and Knoxville Railroad Company to bring themselves within the provisions of an act, entitled An Act to Incorporate the Nashville and Knoxville Railroad Company, passed December 22d, 1853; *Provided*, That no State aid is granted to this road.

SEC. 19. That this act take effect from and after its passage.

DANIEL S. DONELSON,
Speaker of the House of Representatives.

JOHN C. BURCH,
Speaker of the Senate.

Passed March 20th, 1858.

CHAPTER CLI.

AN ACT to establish a system of Internal Improvements in this State.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That whenever the East Tennessee and Virginia Railroad Company shall have procured *bona fide* subscriptions for the capital stock in said company to an amount sufficient to grade, bridge, and prepare for the iron rails the whole extent of the main trunk line proposed to be constructed by said company, and it shall be shown by said company to the Governor of the State that said subscriptions are good and solvent, and whenever said company shall have graded, bridged, and shall have ready to put down the necessary timbers for the reception of rails, and fully prepared a section of thirty miles of said road, at either terminus, in a good and substantial manner, with good materials, for putting on the iron rails and equipments, and the Governor shall be notified of these facts, and that said

section, or any part thereof, is not subject to any lien whatever, other than those created in favor of the State by the acts of 1851–52, by the written affidavits of the chief engineers and President of said company, together with the written affidavit of a competent engineer, by him appointed, at the cost of the company, to examine said section, then said Governor shall issue to said company *coupon* bonds of the State of Tennessee to an amount not exceeding eight thousand dollars per mile on said section, and on no other condition, which bonds shall be payable at such place in the United States as the President of the company may designate, bearing an interest of *six per centum per annum*, payable semi-annually, and not having more than forty, nor less than thirty, years to mature.

SEC. 2. *Be it enacted*, That the bonds before specified shall not be used by said company for any other purpose than for procuring the iron rails, chairs, spikes, and equipments for said section of said road, and for putting down said iron rails, and the Governor shall not issue the same unless upon the affidavit of said President, and a resolution of a majority of the Board of Directors, for the time being, that said bonds shall not be used for any other purpose than for procuring the said iron rails, chairs, spikes, and equipments for said section, and for putting down said iron rails, and the Governor shall have power to appoint a commissioner, to act, under oath, in conjunction with said President in negotiating said bonds for the purposes aforesaid, and to act in other matters pertaining to said company, where the interest of the State, in the opinion of the Governor, may require it.

SEC. 3. *Be it enacted*, That so soon as the bonds of the State shall have been issued for the first section of the road as aforesaid, they shall constitute a lien upon said section so prepared as aforesaid, including the road bed, right of way, grading, bridges, and masonry, upon all the stock subscribed for in said company, and upon said iron rails, chairs, spikes, and equipments, when purchased and delivered, and the State of Tennessee, upon the issuance of said bonds and by virtue of the same, shall be invested with said lien or mortgage without a deed from the company, for the payment by said company of said bonds, with the interest thereon, as the same becomes due.

SEC. 4. *Be it enacted*, That when said company shall have prepared as aforesaid a second section, or any additional number of sections of twenty miles each of said road, connecting with a section already completed for the iron rails, chairs, spikes, and equipments, as provided in the first section of this act, and the Governor shall be notified of the facts as before provided, he shall, in like manner, issue to said company like bonds of the State of Tennessee to an equal amount with that before issued under the first section of this act, for each and every section of twenty miles of said road so prepared as aforesaid, but upon the terms and conditions herein before provided, and upon the issuance of said bonds the State of Tennessee shall be invested with a like mortgage or lien, without a deed from said company, upon said stock and upon said first and additional section or sections of said road so prepared, upon the rails and equipments put, or to be put, upon the same, for the payment of said bonds and the accruing interest thereon; *Provided*, that if the last section of said road shall be less than twenty miles, or if the railroad proposed to be constructed by any company hereinafter specified, shall be less than thirty miles in extent, bonds of the State shall be issued for such section, or such railroad as may be less than thirty miles in extent, for an amount in proportion to the distance as provided in this act, but upon the same terms and conditions, in all respects, as required in regard to the bonds to be issued for the other sections of said road. And when the whole of said road shall be completed, the State of Tennessee shall be invested with a lien, without a deed from the company, upon the entire road, including the stock, right of way, grading, bridges, masonry, iron rails, spikes, chairs, and the whole superstructure and equipments, and all the property owned by the company as incident to, or necessary for, its business, and all depots and depot stations, for the payment of all of said bonds issued to the company as provided in this act, and for the interest accruing on said bonds. And after the Governor shall have issued bonds for the first section of the road, it shall not be lawful for said company to give, create, or convey to any person or persons, or body corporate whatever, any lien, incumbrance, or mortgage of any kind which shall have priority over, or come in conflict with the lien of the State

herein secured; and any such lien, incumbrance, or mortgage shall be null and void as against said lien or mortgage of the State, and the said lien or mortgage of the State shall have priority over all other claims existing or to exist against said company.

SEC. 5. *Be it enacted*, That it shall be the duty of said company to deposit in the Bank of Tennessee at Nashville, at least fifteen days before the interest becomes due, from time to time, upon said bonds issued as aforesaid, an amount sufficient to pay such interest, including exchange and necessary commissions, or satisfactory evidence that said interest has been paid or provided for, and if said company fail to deposit said interest as aforesaid, or furnish the evidence aforesaid, it shall be the duty of the Comptroller to report that fact to the Governor, and the Governor shall immediately appoint some suitable person or persons, at the expense of the company, to take possession and control of said railroad, and all the assets thereof, and manage the same and receive the rents, issues, profits, and dividends thereof, whose duty it shall be to give bond and security to the State of Tennessee, in such penalty as the Governor may require, for the faithful discharge of his or their duty as receiver or receivers, to receive said rents, issues, profits, and dividends, and pay over the same under direction of the Governor towards the liquidation of such unpaid interest. And if said company fail or refuse to deliver up said road to the person or persons so appointed by the Governor, the said person so appointed shall report that fact to the Governor, who shall forthwith issue his warrant, directed to the Sheriffs of the counties through which said road shall run, commanding them to take possession of said road, fixtures, and equipments, and everything pertaining thereto, and place the said receiver in full and complete possession of the same, and said receiver so appointed shall continue in the possession of said road, fixtures, and equipments, and run the same and manage the entire road until a sufficient sum shall be realized, exclusive of the costs and expenses incident to said proceedings, to pay off and discharge the interest as aforesaid, due on said bonds, which being done, the receiver shall surrender said road and fixtures and equipments to said company. The Comptroller shall, from time to time, settle the ac-

counts with the receiver, and the balance shall be deposited in the Treasury of this State. The Comptroller is authorized, and it is made his duty, upon his warrant to draw from the Treasury any sum of money necessary to meet the interest on such bonds as may not be provided for by the company, as provided for in this act, and the Comptroller shall report thereof to the General Assembly from time to time.

SEC. 6. *Be it enacted*, That if said company shall fail or refuse to pay any of said bonds when they fall due, it shall be the duty of the Governor to notify the Attorney-General of the district in which is situated the place of business of said company, of the fact, and thereupon, said Attorney-General shall forthwith file a bill against said company in the name of the State of Tennessee, in the Chancery or Circuit Court of the county in which is situated said place of business, setting forth the facts, and thereupon said court shall make all such orders and decrees in said cause as may be deemed necessary by the court, to receive the payment of said bonds, with the interest thereon, and to indemnify the State of Tennessee against any loss on account of the issuance of said bonds, by ordering the said railroad to be placed in the hands of a receiver, ordering the sale of said road, and all the property and assets attached thereto or belonging to said company, or in such other manner as the court may deem best for the interest of the State.

SEC. 7. *Be it enacted*, That at the end of five years after the completion of said road, said company shall set apart one *per centum per annum* upon the amount of bonds issued to the company, and shall use the same in the purchase of bonds of the State of Tennessee, which bonds, the company shall pay into the Treasury of the State, after assigning them to the Governor, and for which the Governor shall give said company a receipt, and as between the State and said company, the bonds so paid in, shall be a credit on the bonds issued to the company. And bonds so paid in and the interest accruing thereon, from time to time, shall be held and used by the State as a sinking fund, for the payment of the bonds issued to the company, and should said company repurchase any of the bonds issued to it under the provisions of this act, they shall be a credit as afore-

said and canceled. And should said company fail to comply with the provisions of this section, it shall be proceeded against, as provided in the fifth section of this act.

SEC. 8. *Be it enacted*, That the President of the company shall make semi-annual reports under oath, to the Governor, until the completion of said road, setting forth fully the condition of the road and the company, and after its completion, he shall report to the Governor annually, showing the financial condition of the company, giving a statement of the trade and travel upon the road, the receipts and expenditures, net earnings and dividends, and what per cent. is paid on the stock to the stockholders. And said reports shall be consolidated every two years by the President of said company, and said consolidated reports shall be laid before the Governor by the first of September every two years after the completion of the road, and the Governor shall lay said report before the Legislature for its action, at the next meeting thereof, after said report is made.

SEC. 9. *Be it enacted*, That it shall not be lawful for any officer of said company to engage in any speculation or dealing, either directly or indirectly, in any real estate on or along the line, at any of the depots or depot stations, or at either terminus of said road, until after the road is completed, and every officer of the company before entering upon the duties of his office, shall take an oath in writing before any Judge or Justice of the Peace in this State, that he will not knowingly violate the provisions of this act, and that he will faithfully perform the duties of his office, and if any such officer of the company, or other person taking an oath as herein provided, knowingly swear falsely, he shall be deemed guilty of perjury and subject to all the pains and penalties thereof, and every affidavit required under this act, may be sworn to before any Judge or Justice of the Peace in this State.

SEC. 10. *Be it enacted*, That the provisions of this act shall extend to and embrace the Chattanooga, Harrison, Georgetown, and Charleston Railroad Company, the Nashville and Northwestern Railroad Company, the Louisville and Nashville Railroad Company, the Southwestern Railroad Company, the McMinnville and Manchester Railroad Company, the Memphis

and Charleston Railroad Company, the Nashville and Southern Railroad Company, the Mobile and Ohio Railroad Company, the Nashville and Memphis Railroad Company, the Nashville and Cincinnati Railroad Company, the East Tennessee and Georgia Railroad Company, the Memphis, Clarksville and Louisville Railroad Company, and the Winchester and Alabama Railroad Company, so far as the main trunk roads to be constructed by said companies lie within the limits of this State, and not otherwise, and said companies shall have all the powers and privileges, and be subject to all the restrictions and liabilities contained in this act. *Provided*, That this act shall not extend to or embrace more of the road proposed to be built by the Memphis, Clarksville and Louisville Railroad Company, than that part which lies between the Kentucky line, and the Nashville and Northwestern Railroad or the Nashville and Memphis Railroad. *And provided further*, That this act shall not extend to or embrace the East Tennessee and Georgia Railroad Company, unless said company shall extend their road so as to form a junction with the East Tennessee and Virginia Railroad at Knoxville; and in the event said company fail or refuse so to extend their said railroad to make said junction, then all the rights, powers, and privleges, with the restrictions and liabilities of this act, shall extend to any company that may be hereafter chartered for the purpose of building a railroad to make said connection; and in no event shall the provisions of this act extend to or embrace more of the East Tennessee and Georgia Railroad, than that part which lies between Blair's Ferry and the city of Knoxville. *And provided*, That any lien now existing on the East Tennessee and Georgia Railroad, shall not prevent the issuance of bonds for its benefit as herein provided, but the affidavits required in the first section of this act, shall be deemed sufficient as applicable to said company, if it is stated in said affidavits that no lien has been created on said road since the passage of this act.

Sec. 11. *Be it enacted*, That the gauge of all of said railroads (unless connecting with roads in other States of a different gauge) shall be the same as that of the Nashville and Chattanooga Railroad, and not otherwise; and the iron rails to be put upon said road shall not be less than eighty tons to the mile, if

the U rail is used, and not less than one hundred tons to the mile if the T rail is used.

SEC. 12. *Be it enacted*, That the State of Tennessee expressly reserves the right to enact by the Legislature thereof, hereafter, all such laws as may be deemed necessary to protect the interest of the State, and to secure the State against any loss in consequence of the issuance of bonds under the provisions of this act, but in such manner as not to impair the vested rights of the stockholders of the companies.

SEC. 13. *Be it enacted*, That it shall be the duty of the Governor, from time to time, when there shall be reliable information given to him that any railroad company shall have fraudulently obtained the issuance of the bonds of the State, or shall have obtained any of said bonds contrary to the provisions of this act, he shall notify the Attorney-General of this State, whose duty it shall be forthwith to institute, in the name of the State, a suit in the Circuit or Chancery Court of the county of the place of business of the company, setting forth the facts; and when the fact shall satisfactorily appear to the court that any of said bonds shall have been fraudulently obtained, or obtained contrary to the true intent, meaning and provisions of this act, then and in such case the court shall order, adjudge and decree that said road lying in the State, with all the property and assets of said company, or a sufficiency thereof, shall be sold, and the proceeds shall be paid into the Treasury, and it shall be the duty of the Comptroller immediately to vest the same in stocks, creating a sinking fund, as provided for in the seventh section of this act. And said company shall forfeit all rights and privileges under the provisions of this act; and the stockholders thereof shall be individually liable for the payment of the bonds so fraudulently obtained by such company, and for all other losses that may fall upon the State in consequence of the commission of any other fraud by such company, excepting such stockholders as may show to the court that they were ignorant of or opposed the perpetration of such frauds by the company.

SEC. 14. *Be it enacted*, That in the event any of the roads, fixtures, or property belonging to any of said roads shall be sold under the provisions of this act, it shall be the duty of the

Governor to appoint an agent for the State, who shall attend said sale and protect the interest of the State, and shall, if necessary to protect said interest, buy in said road or property in the name of the State, and in case said agent shall purchase said road for the State, the Governor shall appoint a receiver, who shall take possession of said road and property, and use the same as provided for in the fifth section of this act, and said receiver shall settle with the Comptroller semi-annually, until the next meeting of the General Assembly.

SEC. 15. *Be it enacted*, That this act shall be deemed and taken to be a public act as to all purposes of notice: *Provided*, that should any of the companies hereinbefore enumerated have, *bona fide*, and before the passage of this act, purchased or otherwise contracted for, upon their own credit, the necessary iron rails, spikes, equipments, etc., for their road or roads, or any section or sections thereof, the bonds of the State shall be issued to such company or companies, as hereinbefore prescribed; *Provided further*, That no company shall receive more than the amount per mile herinbefore prescribed; *and provided*, that the provisions of this act shall only extend to one of the lines of railroad proposed to be constructed by the Nashville and Northwestern Railroad Company, and the Nashville and Memphis Railroad Company, between Nashville and the Tennessee River, and the company first obtaining *bona fide* subscriptions, as provided in the first section of this act, made known to the Governor as therein prescribed, shall be entitled to the provisions of this act for the whole distance from Nashville to its terminus on the Mississippi River, and may cross the Tennessee River at any point between Ross' Ferry and a point one mile below White Oak Island; and the other company shall have power to connect their road with the one thus entitling itself to the provisions of this act for its whole distance, at any point they may select, and shall only be entitled to the provisions of this act from the point of connection to its terminus on the Mississippi River; *Provided also*, That if the Louisville and Nashville Railroad Company locate their road through Sumner County by way of Gallatin, then the provisions of this act shall not extend to or embrace the Nashville and Cincinnati Railroad Company, and the charter granted to the said last

named company shall, in that event, be void. But should said road not be so located, and both companies desire to run their roads to Nashville, then the provisions of this act shall extend to the company first obtaining *bona fide* subscriptions, as provided in the first section of this act, made known to the Governor as therein prescribed, and the other company shall unite their road to the one so provided for, at some suitable point, at least ten miles north of Nashville, and the provisions of this act shall extend to said road only from the point of connection to the Kentucky State line; *Provided further*, That the bonds of the State shall not issue to the Louisville and Nashville Railroad Company, or to the Nashville and Cincinnati Railroad Company, as provided in this act, unless one of said companies shall agree to locate and extend its road across Cumberland River at or convenient to Nashville or South Nashville, within ten years from the date of the passage of this act.

SEC. 16. *Be it enacted*, That the railroad companies specified in this act, and all other railroad companies hereafter incorporated in this State, shall have power to construct their roads so as to cross each other if necessary, by the main trunks or branches, or to unite with each other, or with the branches thereof; and it shall be the duty of said companies, when required, to receive on their roads and branches the full loaded freight cars from each other and the branches thereof, and transport the same to their destination, and return them, without charging for the transportation of the goods, wares, merchandise, and produce therein, any greater rate of freight than they charge for similar goods, wares, merchandise, and produce in their own cars; *Provided*, That said companies shall not be compelled to receive such cars on their roads unless they are constructed with the same gauge and are of equal strength with their own cars, of which the principal engineer on the road of which it is proposed to require said cars to be transported shall be the judge; *Provided*, That the bonds of the State proposed to be issued to the Memphis and Charleston Railroad Company under the provisions of this act, shall, in the event of their issuance to said company, be divided between the main trunk line proposed to be constructed by said company, and the branch thereof from the town of Moscow to the town of Som-

merville, in the county of Fayette, according to the respective lengths of said main trunk line and said branch; and the lien of the State, as herein secured, shall continue upon said main line, and also upon said branch, until said bonds and interest are paid, as heretofore provided.

SEC. 17. *Be it enacted*, That in all cases where bonds may be issued to any of said companies, as provided in this act, the State of Tennessee shall be entitled to two directors in each company, to be appointed by the Governor of the State, to which bonds may be issued.

SEC. 18. *Be it enacted*, That when the Nashville and Chattanooga Railroad Company shall have completed twenty-five miles of their road, in addition to the eighty miles specified in the second section of the act, passed the 4th of February, 1848, Chapter 169, then the Governor of the State shall endorse and guarantee, in the name and on behalf of the State of Tennessee, the bonds of said company to the amount of one hundred and seventy-five thousand dollars, and in like manner, when another section of twenty-five miles of said road shall have been completed, the Governor of the State, in the name and on behalf of the State, shall endorse and guarantee the bonds of said company to the additional amount of one hundred and seventy-five thousand dollars, and said bonds are to be endorsed and guaranteed in the same manner, and the same indemnity is to be furnished by said company for the protection of the State, and the like lien is to be given, and the same character of bonds are to be endorsed and guaranteed, as provided in the said act of the 4th of February, 1848.

SEC. 19. *Be it enacted*, That the aid contemplated by the first section of this act, shall only be extended to one of the roads chartered under the names of the Nashville and Southern Railroad Company, and the Tennessee and Alabama Railroad Company. *Provided*, That the first one of said roads which shall secure the subscription of the capital stock, for the construction of the same, shall be entitled to such aid. *Provided further*, That if the Nashville and Southern Railroad Company first obtain the stock in their railroad, as provided in the first section of this act, and shall construct their road to the Tennessee

River, to the Mississippi State line, or to a point between the Tennessee River and the Mississippi State line, then the Tennessee and Alabama Railroad Company may construct their road from the Alabama State line to intersect with the Nashville and Southern Railroad, at such point as said company may select, and the provisions of this act shall extend to the Tennessee and Alabama Railroad from the Alabama State line to said point of intersection. But if the Tennessee and Alabama Railroad Company first obtain the stock in their railroad, as provided in the first section of this act, and construct their road to the Alabama line in the direction of Florence, then the Nashville and Southern Railroad Company may construct their railroad from the Tennessee River, the Mississippi State line, or any point between the Tennessee River and the Mississippi State line, so as to intersect the Tennessee and Alabama Railroad, at such point as the company may select, and the provisions of this act shall extend to said railroad from said point of intersection, to the Tennessee River, the Mississippi State line, or to any point between the Tennessee River and the Mississippi State line. And the Nashville and Southern Railroad Company, and the Tennessee and Alabama Railroad Company shall have power to unite or consolidate their stock if they deem it advisable, and upon such terms as the companies may agree upon. *Provided also*, That if the Memphis and Nashville Railroad Company shall not comply with the requirements of this act, and complete thirty miles of their road, within four years; or if the Nashville and Northwestern Railroad Company shall, in like manner, fail to complete thirty miles of their road within four years, then the Tennessee Central Railroad Company shall have all the rights, powers, privileges, and benefits, intended to be given by this act, to those companies respectively, under the same restrictions and limitations; but the said Tennessee Central Railroad Company shall be allowed two years longer time, in which to prepare thirty miles of their road-bed for the reception of the iron rails, and may then receive the aid of the State, in the issuance of bonds for their benefit, as prescribed in this act. *Provided*, That this provision shall not preclude any subsequent Legislature from extending the time of four years, in which to complete any section of

thirty miles of said Nashville and Memphis, or Nashville and Northwestern Railroad. That each of said companies is hereby authorized and required to appoint an agent or agents to whom the bonds shall be delivered, and whose duty it shall be to control said bonds, and see that they are exclusively applied to the payment of the railroad iron and equipments, as provided for in this act, and for no other purposes whatever. And the said agent before he receives the bonds of the State, shall give bond and security, to be approved by the Governor and payable to the State of Tennessee, for the application of the bonds or the proceeds thereof, to the purposes aforesaid. *Provided*, That before any bonds, under the provisions of this act, shall be issued to any agent of any railroad, contemplated by this act, the President of any such company shall first deposit in the office of the Secretary of State, a full, true, and accurate list of all the stockholders, with the sums subscribed by each and every stockholder.

SEC. 20. *Be it enacted*, That no road embraced in this act shall be entitled to State aid, unless it shall, within four years, complete at least one section of thirty miles, or the whole length of the road, if less than thirty miles long.

JORDAN STOKES,
Speaker of the House of Representatives.

M. R HILL,
Speaker of the Senate.

Passed February 11th, 1852.

CHAPTER LI.

AN ACT to extend the time for receiving State aid by the Louisville and Nashville Railroad Company.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the additional time of eighteen months, from the passage of this act, be, and the same is hereby, granted to

the Louisville and Nashville Railroad Company, to comply with the provisions of an act, entitled "An Act to establish a system of Internal Improvements in this State," passed February 11th, 1852, and the amendments thereto, under the conditions and restrictions in said act specified; *Provided*, That the entire line of road, from Nashville to Bowling Green, in Kentucky, shall, in like manner, be completed and put in operation in three years from the passage hereof.

SEC. 2. *Be it further enacted*, That said company is hereby required to extend said road to some point in the city of Nashville; and that, for this purpose, said company shall, within two years, build and prepare for use, a good and substantial bridge across the Cumberland River; *Provided*, The subscriptions, State aid, or other means in this State of Tennessee, shall be sufficient for that purpose. That said company will, within three months after an estimate shall have been made of cost of said bridge, cause the same to be let to contract, and proceed, if means appropriated or created by amalgamation of the means of companies, or by subscriptions of stock by individuals or corporations, be sufficient to the erection and construction of said bridge. When the contract of construction has been made, a copy shall be filed in the office of the Secretary of State, and it shall then be the duty of the Governor, to execute to said company the bonds of the State of Tennessee, under the provisions of the act or acts authorizing the same, to an amount, from time to time, not exceeding one hundred thousand dollars, which may be necessary to meet the estimates of work done on said bridge, when the same shall amount to a sum not less than twenty thousand dollars; *Provided*, That the contract for construction, shall not extend the time for completion of the said bridge beyond two years. Two directors, on the part of the State of Tennessee, on said company's accepting the provisions of this act, shall fortwith be appointed, who shall be from the time of their appointment in office, and at all meetings of the board, represent stock to the amount of five hundred thousand dollars, and represent the interest of the State at meetings of the stockholders; and either may cast the vote of both, or, in writing, create a proxy to vote for the State. To entitle said company to the provisions of this act, said company shall, within sixty

days after its approval, consent, by a resolution of the board to accept the same, and forward a copy of such acceptance to the Secretary of State, signed by the President and directors composing the board, and countersigned by the Secretary, with the seal of the corporation affixed.

SEC. 3. *Be it further enacted*, That this act shall take effect and be in force from and after its passage; *Provided*, That the lien of the State of Tennessee, shall not extend beyond the State line.

NEILL S. BROWN,
Speaker of the House of Representatives.

EDWARD S. CHEATHAM,
Speaker of the Senate.

Passed November 27th, 1855.

CHAPTER CCXIX.

AN ACT to amend the charter of the Nashville and Cincinnati Railroad Company, and the acts amendatory thereto, and for other purposes.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the charter of the Nashville and Cincinnati Railroad Company, and the acts amendatory thereto, be so amended that said company may locate their road on the most direct and practicable route, so as to connect or unite with the Southwestern Railroad at some eligible point in the county of White or Putnam.

SEC. 2. *Be it further enacted*, That if said Nashville and Cincinnati Railroad Company shall locate their road on the route indicated in the first section of this act, then said Nashville and Cincinnati Railroad Company shall be entitled to receive the same amount of State aid per mile, from the city of Nashville to the junction with the Southwestern road, to which said Nashville and Cincinnati Railroad Company are now entitled by law.

SEC. 3. *Be it enacted*, That the State aid heretofore granted to the said Nashville and Cincinnati Railroad Company to build a bridge over the Cumberland River, may be expended by said company on the route indicated in the first section of this act, in building bridges over Stone's River and the Caney Fork of Cumberland River.

SEC. 4. *Be it enacted*, That the first section shall not prevent said company from locating said road as is pointed out in the existing charter and the former amendments thereto; and should said road be located through Sumner County, said company shall have the right to unite at any point in this State, with the Louisville and Nashville Railroad, and amalgamate the two roads to the city of Nashville, upon such terms as may be agreed upon by the companies; *Provided*, The State aid shall only be granted from the point of intersection to the Kentucky line, or to the point of intersection with the Southwestern Road.

SEC. 5. *Be it further enacted*, That whenever the Edgefield and Kentucky Railroad Company shall have prepared their road for the iron and rails, according to the provisions of the act of July 11th, 1852, entitled "An act to establish a system of Internal Improvements in this State," and the act amendatory thereof, from Edgefield to the foot of the ridge which they propose to tunnel (about fifteen miles from Edgefield), and have, also, in like manner completed a sufficient number of consecutive miles on the north side of said ridge to make, with the distance completed on the south side of said ridge, thirty miles ready for the iron rails, then said company shall be entitled to all the privileges of said act of February 11th, 1852, and the acts amendatory thereof.

NEILL S. BROWN,
Speaker of the House of Representatives.

EDWARD S. CHEATHAM,
Speaker of the Senate.

Passed February 29th, 1856.

No. 128.

AN ACT to incorporate the Memphis and Charleston Railroad Company.

WHEREAS, An act was passed by the State of Tennessee, bearing date the 2d day of February, 1846, and the same was amended by an act of the same State, dated February 4th, 1848, for the formation of a company under the name and style of the Memphis and Charleston Railroad Company, for the purpose of establishing a communication by railroad between Memphis, Tennessee, and Charleston, South Carolina; and, whereas, it is believed that the most eligible route for said road is through a portion of this State; and, whereas, it is also believed that great and lasting benefits will accrue to the inhabitants of this State from said improvement; therefore,

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened*, That the said company shall have the right of way through the territory of this State to construct their road along the Valley of the Tennessee River to the town of Huntsville, and thence to some point on the Nashville and Chattanooga Railroad, or to some point on the Georgia or other railroad leading eastwardly, so as to communicate with Charleston and other Atlantic points; and that said company shall have the right of way over the bed or bank of the Muscle Shoals canal, provided it be found necessary in the construction of said road; and shall also have the right of way through any lands belonging to the State of Alabama, or to the Bank of the State of Alabama, or to any of the branch banks of said State, together with the right to use any stone, timber, or other materials on said lands, necessary in the construction of said road; and said company shall have and enjoy all the rights, powers, and privileges granted to them by the acts of incorporation above mentioned, and shall be subject to all the liabilities and restrictions imposed by the same, together with the following requirements:

SEC. 2. *And be it further enacted*, That in the event said road shall be located through Tuscumbia, it shall be the duty of the company to construct a branch to Florence; and in the event said road shall pass on the north side of the Tennessee River, near Florence, it shall be the duty of said company to construct

a branch to Tuscumbia; *Provided*, That the subscriptions in the town or county applying for such branch shall be fully sufficient to pay the cost of the same.

SEC. 3. *And be it further enacted*, That said company shall be authorized and required to open books for the subscription of stock in the capital of said corporation in the State of Alabama, so as to afford the citizens thereof an opportunity to take stock to the amount of fifteen hundred thousand dollars of the capital of said company; *Provided*, That if said fifteen hundred thousand be not subscribed in Alabama, within ninety days after the books are opened, then it may be taken elsewhere.

SEC. 4. *And be it further enacted*, That the said company shall, at the first meeting of the stockholders, designate a time when, and a place or places in North Alabama where, for the convenience of the citizens of the State who may be stockholders, the subsequent election for directors shall be held, and shall give notice thereof in one or more newspapers published in North Alabama; and said elections shall be held at the same time both in this State and in Tennessee.

SEC. 5. *And be it further enacted*, That the money subscribed by the citizens of Alabama, whether by the State, counties, corporations or individuals, shall first be applied to the construction of the road within the limits of the State of Alabama, and said moneys shall be placed in some safe depository in North Alabama until required for use; *Provided*, That nothing in this section shall be so construed as to prevent the company from putting under contract the whole road whenever in their estimation a sufficient amount of funds shall have been obtained.

SEC. 6. *And be it further enacted*, That said company shall not charge for the transportation of persons or property any higher rates on one part than on another of said road, but the tolls shall be equal and uniform on every part of said road for articles of the same description, whether passing in the one direction or the other.

SEC. 7. *And be it further enacted*, That the company hereby incorporated shall not locate their road on the track of the Tennessee Valley Railroad, nor of any other railroad which has

heretofore been chartered by this State, provided companies have been organized under the same, without first procuring the assent by agreement with said companies; but it shall be lawful for the company hereby incorporated to acquire by purchase, gift, release or otherwise, from any other company, all the rights, privileges and immunities of said company, and possess and enjoy the same as fully as they were or could be possessed or enjoyed by the company making the transfer.

SEC. 8. *And be it further enacted*, That any railroad company now chartered or hereafter to be chartered in this State shall have the right to connect their road with the road authorized by this act.

SEC. 9. *And be it further enacted*, That nothing contained in this act shall prevent the State of Alabama from levying and collecting such taxes on the property of the said company within this State as shall by the General Assembly of the State be assessed on the property of other railroads in this State; nor shall anything therein be construed so as to prevent the chartering and building other railroads in this State coming within any distance whatever of said road; anything in the said law of Tennessee to the contrary notwithstanding.

Approved 7th January, 1850.

No. 129.

AN ACT to amend an act entitled "An act to incorporate the Memphis and Charleston Railroad Company, approved January 7th, 1850."

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That the subscribers to the capital stock of the Memphis and Charleston Railroad in the State of Alabama, from a failure to obtain the necessary legislation from the States of Tennessee and Mississippi, or from any other cause, deem it expedient to form a separate and independent organization, then and in that event